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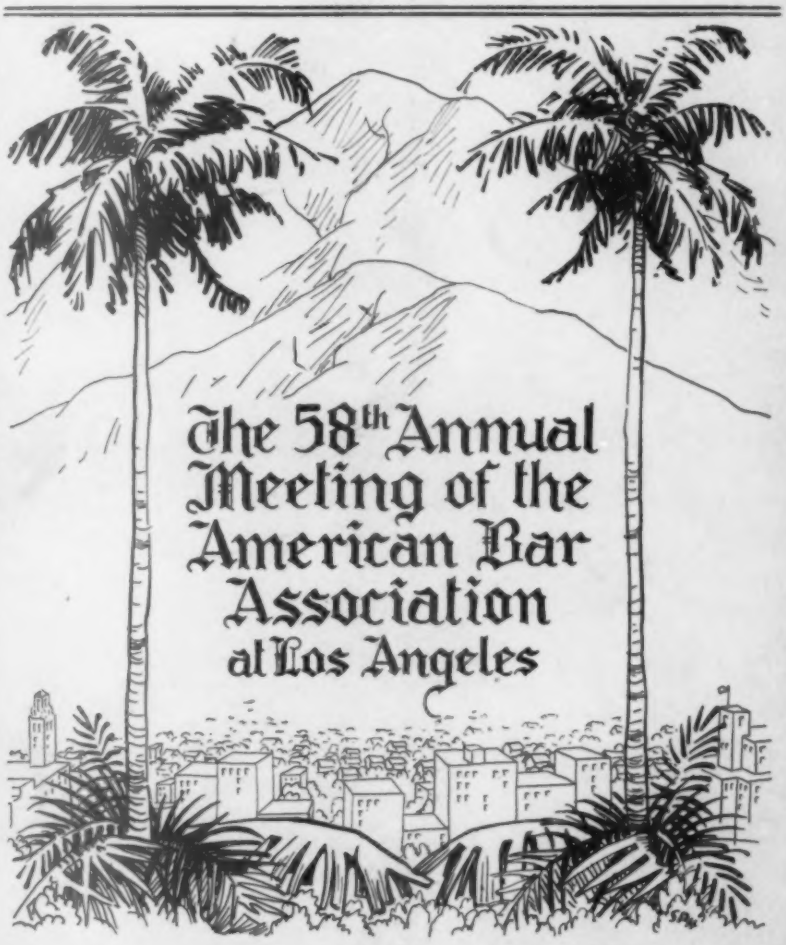

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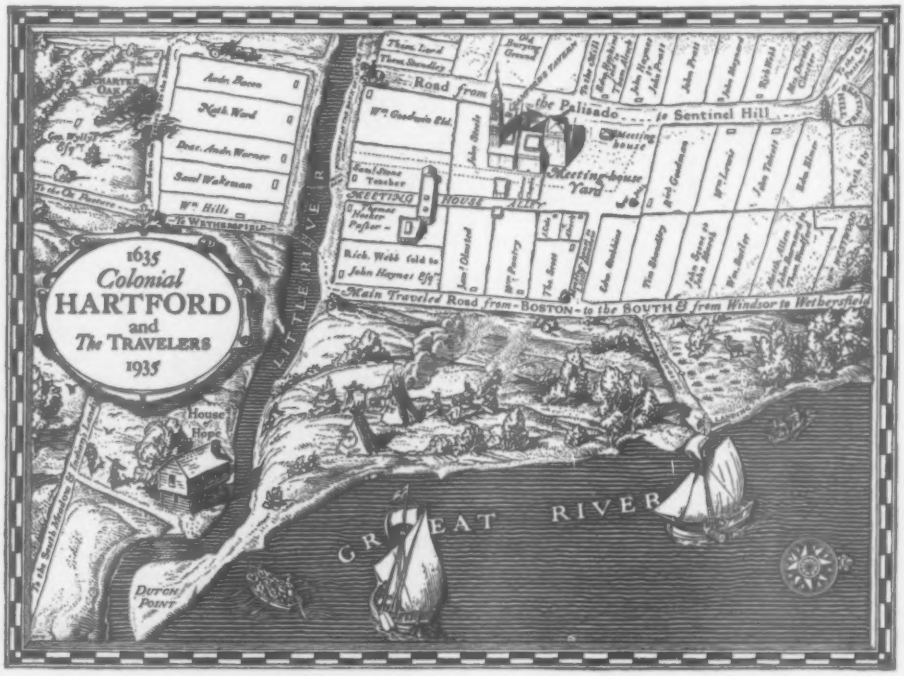

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INDEPENDENCE OF THE JUDICIARY

The National Bar Program during the Past Year, and the Basic Need Which Lies behind All These Activities — It Is Evident That the Bar Desires and Needs a Type of Organization Which Can Be Said to Represent the Whole Profession—Appeal for Cooperation of Members and Bar Associations in Devising Suitable Plan — Selection of Judges and Fundamental Questions Which It Suggests—How the Constitution Deals with the Problem of Due Protection for Rights of Individuals in a Representative Democracy—The American Judiciary, Federal and State, Has Fulfilled the Hopes of Its Creators, Has Been the Protector of Individuals and Minorities, and Served as the Great Equalizing Force and Balance Wheel of Our Constitution — The Duty of Lawyers with Respect to Courts and Our Fundamental Law

By Hon. Scott M. Loftin
President of the American Bar Association, 1934-35

WHEN you elected me your President last year I pledged to uphold and advance to the utmost of my ability the ideals and purposes of the Association and to strive to keep it a real, constructive force in American life. Today I am happy to make a report of my stewardship which has given me the opportunity of so many delightful associations and contacts. The performance of my duties, though strenuous, has been interesting and inspiring. Despite the handicap at this time last year of a steadily diminishing membership, resulting from financial distress of lawyers and the world in general, the Association has gone forward. I attribute this progress to the whole-hearted active and generous cooperation of the officers, the members of the Executive Committee, General Council, sections and conferences, standing and special committees, and members of the Association. Realization of the serious situation confronting us undoubtedly was responsible for this splendid teamwork. At no previous time have the state and local bar associations shown so much interest in the work of our Association, nor has there been such unity of thought and action between them. Needless to say, I am most appreciative and proud of the contribution each one has made to the success of our efforts.

Of course, we have not accomplished all that we had hoped for. It is gratifying, however, to be able to report an increase of over one thousand in membership, an expansion in the activities of the sections, conferences and committees, a better comprehension of the need for coordination of effort between our Association and state and local associations, and an improvement in our financial condition. I invite with some degree of pride your careful consideration of the reports of the officers, sections, conferences and committees which furnish material evidence of these statements. The growth in membership is pleasing, especially when we consider the losses which other organizations have suffered, and should be credited to the zealous and untiring efforts of many loyal members.

Four regional conferences have been held, one each in the first, second, third and seventh circuits, and with the exception of one, were attended by the director of the national bar program and the President. Each of these was attended by many delegates from local and state bar associations within the respective circuit, and much interest was shown in the discussion of the national bar program, coordination of the bar and other subjects. Such conferences furnish a field for our vice-presidents to promote the interests of the Association, by bringing representative members of state and local bar associations together and in touch with the officers and objectives of this Association. It was the general consensus of opinion that these conferences were of definite value in stimulating discussion and crystallization of plans for the better coordination of the bar. I strongly urge that regional conferences be held in as many circuits as feasible each year, to be called by the vice-president for the circuit, and that the President and the director of the national bar program attend as many of them as convenient.

The Junior Bar Conference, although organized less than a year ago, already has become a vigorous and potent force. The large number of younger lawyers in attendance here indicates the interest which this conference has aroused. As they are the future leaders of the bar, the welfare of this Association in the future depends to a considerable extent on their active interest and support. They promoted a nation-wide speaking program emphasizing the importance of the enforcement of criminal law. Conferences were held in many states and an active membership campaign was conducted, resulting in a substantial increase in membership and interest. Most important of all, they feel that they have an active and vital part in what we are trying to do and promise even more outstanding accomplishments along this line in years to come.

A commendable innovation on the part of bar associations has been the presentation in different sections of the country of the historical pageant entitled "The Making of the Constitution," which will be produced by the Los Angeles Bar on Friday evening of this week. I have had the privilege of seeing this pageant twice and can recommend it as an entertainment of educational value and pleasure. I should like to see it presented in every town and hamlet throughout the United States so that the people may visualize the conception and draft-

ing of this immortal document and be inspired to a new and lasting reverence for its purpose. The Committee on American Citizenship has suggested it as a radio play in order to make it possible for millions instead of thousands to learn more of the way in which our Constitution was conceived by its authors.

I enumerate here, even though you know them, the five subjects of the national bar program:—Criminal Law and its Enforcement; Legal Education and Admissions to the Bar: Unauthorized Practice of Law; Selection of Judges and the Enforcement of Professional Ethics. I quote the Honorable Elihu Root since the objects of this program are expressed perfectly in the following words:

> The rapid changes in social forces and organizations imperatively demand from the Bar of the United States an active exercise of its influence upon our laws and the administration and enforcement of law. For the performance of this duty there must be in the Bar new coordination of consideration, discussion, and seasoned opinion, and there must be means for impressing the conclusions thus reached upon all thoughtful citizens.

This entire year has been devoted to carrying out my pledge to promote and advance to the best of my ability this program. I have travelled extensively over the country, speaking to bar associations and law schools, and have talked and corresponded with a great many individual lawyers. I have found an almost unanimous accord with the idea that the American Bar Association should take the lead and focus the attention of the state and local bars upon these primary objectives. It is not possible in the time allotted to give the concrete accomplishments in detail. The report of the Criminal Law Section shows that in at least three-fourths of the state legislatures which have met during the year serious consideration has been given to recommendations made in Milwaukee. These recommendations were endorsed also at the Attorney General's Crime Conference last December. Valuable cooperation has been given the Department of Justice in the aggressive fight against crime. The State Department of Justice idea was favorably received by the bar and was given legislative consideration this year in ten states. All state and local associations should be encouraged and urged to press for its adoption in their own states.

There is just cause for genuine pride in the effectual accomplishment in the field of legal education and admission to the bar. The number of states having the two-year college requirement, either presently or prospectively, has increased to twenty-six. A tremendous amount of work still remains to be done, for it is true that half of the men coming to the bar are being trained even now in unapproved law schools.

In the field of unauthorized practice of law our committees have stressed constantly the need for keeping in mind the public interest which is the paramount reason for prescribing the fiduciary relation of lawyer and client. Lawyers everywhere are demanding that lay agencies shall not be permitted to transact legal business for third persons and that the corporate practice of law shall be discontinued in every form.

Professional ethics is a subject as old as the law itself. You who come from states with an integrated bar have found certainly a more efficacious way of enforcing discipline through the machinery which permits complaints to be investigated fully and fairly and which brings violators of the code of ethics before the court for discipline. In those states, where the court gives authority to grievance committees to act for it in the preliminary steps, machinery is available but there are still many jurisdictions where procedure for the disciplining of unethical lawyers is sadly ineffective. This situation must be remedied through the courts. Lawyers are being indicted for their lack of action in this particular and should mobilize their forces to clear the profession of the charge that it allows unworthy and unethical practitioners to continue to function as officers of the court.

You can see that as a natural consequence of the work of over one thousand different committees in this country considerable headway has been made in promoting the national bar program. This army of some five thousand lawyers is a powerful host but must be united more closely. Its service of communication must be improved to provide promptly and constantly the information of the victories won in the different parts of the field and of the general scheme of attack.

Behind the present program, which seeks improvement in certain definite fields of the law through a coordination of efforts, there lies the basic need for a formal tie-up among state, local and national bar associations. Our Coordination Committee has been working for a number of years on this subject. At a conference in Washington last May, when outstanding leaders of the bar were called together with the Executive Committee and the Coordination Committee, the matter was discussed thoroughly. Since it did not seem to be the time to formulate a definite plan of federation or interlocking membership, it was decided to postpone further discussion to this meeting. It is very evident that the bar desires and needs a type of organization which can be said to represent truly the whole profession. Consequently, we ask your co-operation and the cooperation of your bar associations in contriving a plan which will bring about a more unified, more efficient and more representative national organization of our profession. With the recent grant of $50,000 from the Carnegie Corporation of New York, to be distributed over a three-year period toward the support of our national bar program, we can proceed with renewed enthusiasm and greater confidence in our coordination movement.

The remaining subject of the bar program, namely, the selection of judges, is one that merits reflection and discussion. It is concerned principally with mechanics, but, as soon as we begin to think of plans for improvement, we find ourselves involved in a consideration of the structure of our government and even in the philosophy of all government. Particularly involved is the question of how due protection for the rights of individuals in a representative democracy can be assured.

When the framers of our Constitution met, the first principle upon which they agreed unanimously was that our government should be divided into three branches, executive, legislative and judicial. This decision resulted from the study which those men had made of the history of other governments, their respective strengths and weaknesses. From their recent experiences they were keenly aware of the tyranny to be apprehended from the power

of an individual ruler, and English history had taught them that even Parliament had been equally as tyrannical and intolerant of private rights. Under both the monarchy and the Commonwealth the English judiciary had been subservient, first in the long struggle between the Stuarts and Parliament and later in the contest between George III and the British people. The powerful forces of democracy which had been at work in this country demanded unlimited suffrage, but the authors of our Constitution knew that the earlier republics of the world, which had provided universal suffrage, had disintegrated chiefly because their judicial departments had proved utterly subservient to the will of the electorate.

Montesquieu, whose "Spirit of Laws" supplied the philosophy for our Constitution, asserted that judicial authority in itself had never been inimical to the rights of citizens because, as he said, "The power of the judiciary is next to nothing." Madison expressed the same thought when he said that the judiciary was the least dangerous to political rights since it has neither force nor will, but merely judgment and is in continual jeopardy of being overpowered, awed or influenced by its coordinate branches. All nations had included in their form of government a judiciary, but had limited its jurisdiction to the decisions of controversies between individuals over personal and property rights and to the trial of individuals for crimes against society. The problem before the framers, therefore, was to create a democratic government in which the judiciary should furnish protection against the tyranny of majorities.

The fact that Greek and Roman republics had found the existence of universal suffrage incompatible with the successful conduct of courts because of the direct effect of public opinion upon them, certainly influenced the adoption of the monarchial form of government by practically every other civilized country. Under such a government sovereignty of the state is incarnated in the person of the reigning price. The growth of the democratic idea had produced an entirely different conception of sovereignty, namely, the sovereignty of the people and the right of the majority to rule. Tyranny of princes was known to be subject to restraint through the force of the people, but no satisfactory check to provide against the tyranny of the majority of the people had been found.

And so we find that when the Constitution was drafted in documentary form there was included an express declaration that it should be the supreme law of the land, and that judges in every state should be bound thereby, notwithstanding anything to the contrary in the Constitution or laws of the state. Hence a new principle of government, the rule of law in the abstract rather than a government by individuals, was initiated.

The Constitution made the executive and legislative departments elective at periodical intervals by popular vote. They are, therefore, representatives or servants of the electorate controlled by popular will, swaying responsively to the winds of public opinion; but the judges of the Federal Courts are appointed for life and Congress is forbidden to reduce their compensation during their term of office. The purposes of the federal judicial plan are to render the courts as nearly independent of public opinion as is possible and to make certain that the declaration of the people, that the Constitution is supreme, will be so affirmed at all times by an independent judiciary and that law and justice will be administered in accordance with its provisions. The framers attempted in this manner to create a representative democracy and at the same time provide a safeguard for the protection of the individual rights of citizens. The pattern of the national government thus framed was followed in the adoption of state constitutions.

This wise plan for a separate, independent, coordinate department gave to the country not only the greatest judicial tribunal on earth, which is without parallel in history, but also a judicial system under which justice has been administered to the weak and to the strong, with firmness, honesty and becoming dignity. Only under such a system could a Marshall, a Taney, a White, a Taft and a Hughes be developed. It was under a similar system of selecting judges in England that the great judges of the common law courts and the great Chancellors were called from private life to serve in high judicial stations. They laid the foundations, strong and true, on which illustrious American judges have reared the superstructure of government in this country.

It was not so long after the Constitution was adopted that it was subjected to a test which shook the very foundations of the government. The question whether Congress could pass an act which was in violation of the terms of the Constitution arose. One political group insisted that each state had the right to determine this question and by its own decision to declare such an act void. This theory was called the Doctrine of Nullification. Shortly after the promulgation of this theory a case, in which a comparatively insignificant individual invoked the aid of the court to protect the rights which he conceived to be guaranteed by the Constitution, was submitted to the Supreme Court of the United States. He asserted that since the legislative and executive officials were merely servants of the people, their authority to act as such being derived from the Constitution, laws enacted or sought to be enforced by them could rise no higher than the source of their power; that to permit them to exceed the powers granted to them would deprive the Constitution of its inherent supremacy and would make it possible for Congress to constitute itself a constitution altering and amending body, so that that instrument which had been declared to be the will of the people as a whole could be altered beyond recognition, if not destroyed ultimately. Presented with this alternative, the court held that a law passed in violation of the Constitution is no law; that an act of an official of the executive department in excess of the powers granted to him is void and that the humblest citizen shall receive protection of the courts against any attempt by the legislative or executive departments to enforce such law. Thus was evolved a new function of our national judiciary which was assumed also by the state courts as applied to the acts of state officials and their legislatures. This power of the court to declare statutes and acts of officials void is truly an American innovation in government.

We should not overlook the fact, however, that this power of the judiciary to declare an act void

does not, as is thought by some, render the judiciary superior to the other branches of the government, for the power is not a general supervisory one. It can be exercised by the court only as an incident to the exercise of its judicial right to decide a controversy according to the supreme law and not in advance of action by one of the other branches. Moreover, such power cannot be called into play except upon the application of a citizen claiming to be deprived of his constitutional rights or upon the application of some official of the government. The court determines the validity of a law solely because it has to adjudicate the case submitted to it, and even after it has decided such case its decision affects that particular case only and no other except that the application of the principle established by its opinion may affect other existing statutes or statutes later passed. The court can neither follow up its decision by taking affirmative steps to prevent officials or citizens from subsequently violating the act, nor pursue violators, nor restrain threatened violations except upon the initiative of others.

The results flowing from the establishment of this principle are known well to lawyers. Despite the inability of the judiciary to compel obedience to its commands and judgments by the use of armed forces, despite the fact that it has no control over the expenditures of the nation and is dependent for its continued existence upon the other branches of the government, the right of courts to pass upon the constitutionality of acts has become an established, accepted and respected part of the American system of government. Obedience to decisions involving the exercise of such power has been rendered ever since by loyal citizens and officials.

From the beginning of history men have insisted that judges should be just and impartial, well versed in law, and strong of character. The independence and power of the judiciary in America require additional qualifications of its members. As stated in our Canons of Judicial Ethics, they must be "fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influence." They must have mental and moral courage to adhere to the constitutions of our nation and of our states, irrespective of the demands of popular majorities. If the courts do not possess such qualities, they will fail in their principal function of protecting individuals and minorities against the tyrannical exercise of the power of majorities.

John Stewart Mill in his "Essay on Liberty" said, "The people who exercise the power are not always the same people with those over whom it is exercised, and the self-government by the people is not the government of each by himself, but of each by all the rest." Therefore, the will of the people as expressed politically on any matter is at best the will of only the most numerous part of the people. Thus our courts and our judges in America have become more than mere arbitrators between individuals; they are exponents of the law in the abstract and law in the concrete as embodied in the Constitution. Law is our sovereign and citizens and officials obey orders of our courts because they recognize such sovereignty. Even great political majorities have desisted from the further pursuit of their objectives in deference thereto.

The wisdom of this respectful yielding is proved in the history and development of the American nation. For more than one hundred and fifty years our courts have exercised this power. Against them have beat all the forces of political elements: tornadoes of local prejudice, great tidal waves of partisan passion whipped by the winds of demagoguery, avalanches of criticism and slanders from officials, and at times raging floods of malevolence and gossip, sapping at the foundation. Wrongs have been perpetrated at times by some of its members, consciously or unconsciously; weak pillars of the structure have collapsed and gone down. Some of its most courageous members have been unjustly maligned while others, weak and lacking courage, have been swept out to the boundless ocean of oblivion. Yet, in spite of this, we can say truthfully and without exaggeration that the American judiciary, federal and state, has fulfilled the hopes of its creators, justified the wisdom of its own decisions and served as the great equalizing force and balance wheel of our constitutional form of government. By adherence to the principles of organic law the courts have stood firm against the attempts of majorities to wreak vengeance on individuals and minorities. The damage wrought to it by its external and internal enemies only proves the fact that mankind cannot build a perfect and everlasting structure, just as the damage wrought by the elements to the physical monuments of man demonstrates the weakness of all man made structures. The regard in which our courts are held today and the power which they wield may be ascribed to the honesty, integrity, learning, ability, and even more to the mental and moral courage that has characterized the occupants of the bench. The success of our government, despite the existence of universal suffrage in a country so vast in extent and so populous in numbers, has disproved the predictions of those who prophesied its early demise, because they lacked confidence in the fundamental goodness of the people and failed to recognize their adherence to the ideals of justice.

The American people, like their English forebears, have accepted the decisions of their courts and submitted thereto. When constitutions or laws or decisions of particular courts have produced injustice they have been corrected or amended in an orderly manner. Thus has been built a civilization where peace and security prevail, where man's humanity to man is world-renowned and where individual rights are sacred.

Many of the states did not adopt the method of the Federal Constitution for the selection of judges. Some provide for the appointment of judges for limited terms only; others select their judges at primary or general elections. In many states the salaries are inadequate. We recognize, of course, that in all the states there are to be found wise, able and upright judges, who are a credit to the bench and whose careers are worthy of emulation. Nevertheless, if good judges are to be made secure in their tenures of office and weaker ones are to be displaced with stronger ones, and if all judges are to be chosen in a manner becoming to judicial stations and encouraging to a firm, impar-

tial administration of justice under law, the method of selecting the personnel of the judiciary can be improved in some states at least.

No fixed formula can be devised that will produce in every instance the ideal type of judge. As long as courts pass upon the constitutionality of acts of the other two branches of our government there will be pressure from political majorities. Plans have been made by the bar to minimize such influences so that the independence of the judiciary will be more secure.

In my opinion, the three main essentials to establishing this independence are a term of office that is of substantial duration, adequate compensation, and a plan that will insure drafting into service men who are qualified by character, experience and ability for judicial position, and, who will not be swayed by popular or group influences or prejudices, nor dismayed by the insistence of coordinate branches of the government.

In an effort to accomplish the desired end which every good citizen has in mind, different plans have been proposed in several states. In each instance, the proponents of the plan stressed their desire for an able and independent judiciary. Activity during the past year has been little short of amazing to anyone who has followed the slow progress formerly made. California took the lead and passed an amendment to its Constitution providing for appointment of judges with a subsequent check by the electorate. This procedure applies to the Supreme Court and the Court of Appeals, and may be adopted by the voters of any county for their Superior Court, if they so desire. In nine other states bills and constitutional amendments, providing for a change in the method of selecting judges, were introduced at the last session of their respective legislatures. Undoubtedly, consideration of this matter by bar association committees stimulated this action, and the example of California encourages the bar to feel that improvement in the method of selection is not as hopeless as it seemed.

It is not my intention to advocate the adoption of any particular plan for selecting judges since it may be that, on account of difference in local conditions, no plan can be devised that will be equally effective in all states. It is my purpose, however, to make it plain that every state should have a plan that will attract to the courts the best talent and the most worthy lawyers so that justice under law may be administered without fear or favor by an able, fearless and independent judiciary.

As lawyers it is our duty at all times to build in the minds of the American people by precept and example respect for the Constitution and decisions of our courts. Their decisions will be accepted without question or resentment only when the people of America recognize the supremacy of the Constitution and the sovereignty of law.

When there is agitation, following a judicial pronouncement that a statute is in violation of the Constitution, for a change in the judicial system, which would take away, directly or indirectly, the court's power in this respect, the bar should condemn vigorously any such proposal, should mobilize all of its influences and forces to defeat any such attempt and should seek to preserve inviolate the power of the court as it exists today. It is this power that safeguards the supremacy of the Constitution and the rights of the states and the people thereunder. If a change in our organic law is deemed desirable, the method provided by the Constitution is the proposal of an amendment which can be adopted after thorough discussion and deliberation by the people. This prudent provision was made by the founders of our government to forestall changes without due thought and mature consideration, and to prevent popular whims and false philosophies of government from being incorporated into our Constitution. If the courts are ever deprived of the power to determine constitutionality of statutes, no protection will exist to preserve primordial rights of life, liberty and pursuit of happiness to the individual citizen, nor to prevent tyranny of executives and oppression by popular majorities. The exercise of this power has conserved the traditions and principles of our government and of individual liberties which have been inherited by us from our American and English forefathers and whose priceless value has been manifested through the centuries.

Abraham Lincoln wisely admonished, "Let reverence of the law become the political religion of the nation." If our constitutional form of government is to survive, there must be reverence for the supreme law of the land. The independence of the judiciary is the safeguard of the Constitution and of the immutable rights and liberties of American citizens.

GEORGE MAURICE MORRIS
Chairman, General Council

FIFTY-EIGHTH ANNUAL MEETING GIVES SIGNAL FOR FURTHER ADVANCE

Presidential Address Stresses the Fundamentals That Lie behind Some of the Association's Major Campaigns—Conference on Better Organization of the Bar Goes on Record in Favor of Organic Connection between the American Bar Association and the State and Local Bar Associations—Discussion of National Bar Program Occupies Three General Sessions —Hon. John J. Parker Speaks on Enforcement of Professional Ethics—Four Uniform Acts Approved and Recommended for Adoption — Pending Legislation Approved and Disapproved—Municipal Law Section and Junior Bar Section Created—Increase in Membership during Past Year Reported — Los Angeles Affords Marvelous Setting and Every Possible Facility for Meeting

THE Fifty Eighth Annual meeting, held at Los Angeles, July 16-19, showed a great organization on the march toward well understood objectives. The program bore witness to the energizing forces that are at work in the Association. There was nothing static about it. Three main sessions were devoted to plans of action closely connected with the National Bar Program. The same spirit was manifested throughout the entire proceedings.

The Conference on a "Better Organization of the Bar" marked a distinct advance toward the goal of an Association which will be representative of the whole Bar of the nation. Its resolutions were, of course, as stated by Chairman Knight, only advisory. But they revealed a temper wholly in sympathy with the plan of coordinating the scattered forces of the profession. Its voice was for action and against half-measures. In passing on the four plans submitted by the Coordination Committee in its report as a basis for discussion, it declared itself unhesitatingly in favor of the principle of the fourth, which calls for "federalization of the American Bar and the creation of a House of Delegates as the governing and policy-determining body."

The sentiment of the Conference as expressed in resolutions and in the various discussions was plainly in favor of some kind of a plan of organization which will give the individual members of the Association a greater voice in the conduct of its affairs than they have at present. One resolution which was adopted recommended consideration of a plan providing for the election of the Officers by mail and for a further use of the referendum on important questions. Another suggested that there be "some kind of proportionate representation" in the organization as finally worked out —although the unanimity which generally characterized the proceedings was not evident here.

The sessions were all well attended and the entire program, so different in many respects from those heretofore arranged, proved to be of real interest. President Loftin's address at the opening session dealt mainly with the "Independence of the Judiciary," a timely and significant subject. Mr. O'Melveny's sketch of the late Judge Erskine M. Ross made this generous Judge and lawyer a real person to those who never knew him. It will be printed in the next issue of the Journal, as will Judge McDermott's statement as to the Work of the American Law Institute. The addresses at the three National Bar Program sessions were all significant contributions to the Association's program of action, and all will be found in this issue.

A summary of the work of the Association at Los Angeles is printed on another page of this issue. Two new Sections were created—the Section on Municipal Law and the Junior Bar Section. An account of the organization of the former is printed in this issue, and in the next one we trust to have a similar report with regard to the Junior Bar Section. Four new Uniform Acts, presented by the Conference of Commissioners on Uniform State Laws, were approved and recommended to the States for adoption. Various proposals for legislation were either approved or disapproved, in accordance with the recommendations of Committees and Sections. The grist turned out at the business sessions of the meeting was fully equal in quantity and quality to the products of previous meetings.

There was one resolution which was adopted with the greatest enthusiasm and with no mental reservations whatever: it was the one expressing appreciation of the cordial and generous hospitality of the hosts of the Association. The facilities provided by the State Bar and the Los Angeles Bar Association for holding the regular meeting have seldom been equalled and could not possibly be excelled. As for the entertainment part of the program, it was a source of unending pleasure to the visitors and their families.

The "Symphony under the Stars," in the Hollywood Bowl on Tuesday evening, will never be forgotten by those who appreciate the beautiful and majestic, or by those who failed to take along a light overcoat or wrap against the cool night air. Presentation of the pageant, "The Making of the Constitution of the United States of America," in the Philharmonic Auditorium on Friday evening, was another high point—in fact, the peak—on the entertainment program. It was given by a cast from the Los Angeles Bar Association, and it was given with a feeling and understanding which probably none but lawyers could have displayed. Both of these features were a success in every sense.

Then on Friday afternoon there was the visit to the Huntington Library, with its rare collection of literary legal antiquities, garden party on

grounds of unforgettable beauty, and the visit to the Huntington Art Gallery with its famous collection of masterpieces, among them the "Blue Boy," and "Mrs. Siddons as the Tragic Muse;" the visit to certain Movie Studios, where one got a glimpse of the mechanics of a great industry and even of a film in the making; the barbecue luncheon at the Uplifters' Club, Santa Monica Canyon, and the visits to interesting scenes around Los Angeles, including some beautiful homes and gardens, provided especially for the ladies; the special functions provided for the Junior Bar, and many other attentions almost too numerous to mention. What is more, the entertainment program for the Commissioners on Uniform State Laws, who met during the week preceding the meeting of the Association, was quite as elaborate.

For this unstinted hospitality due acknowledgment should be made to the chairman and members of the many committees concerned in it. The members of the General Committee in charge of arrangements for the Los Angeles Bar Association are given elsewhere in this issue. Mrs. Jefferson P. Chandler was chairman of the Committee of Hostesses, and Mrs. Roy V. Reppy was Vice-Chairman.

The Annual Banquet took place on Thursday evening. President Loftin presided and interesting addresses were made by Hon. J. W. de B. Farris, K. C., of Vancouver, representative of the Canadian Bar Association; Hon. Merrill E. Otis, Federal Judge in the Western District of Missouri, and Hon. John W. Preston, Justice of the California Supreme Court. The function was enjoyed by all present.

President Loftin Delivers Address on "Independence of the Judiciary"—Executive Committee's Report Read and Approved—Work of American Law Institute

THE opening session of the Fifty-Eighth Annual Meeting of the Association was held in the handsome and commodious Philharmonic Auditorium. A large audience was present as President Scott M. Loftin called the meeting to order. He announced that the first thing on the program was the address of welcome by Hon. Gurney E. Newlin, former President of the American Bar Association and General Chairman of the Committee in Charge of All the Arrangements for the meeting. Mr. Newlin spoke as follows:

"Mr. President, Fellow Members of the American Bar Association, Ladies and Gentlemen: If I may, in the language of the early Californians, paraphrase an expression, it is my great privilege *dar la bienvenida,* to welcome you. We are indeed honored that you assemble here for your Fifty-Eighth Annual Meeting. We expected to have the pleasure of your presence three years ago, but when the Chief Justice of the Supreme Court of the United States indicated that it was the desire of that Court that the American Bar Association should hold its meeting at the time of the laying of the cornerstone of the new building of the Supreme Court, we regretfully, and we hope gracefully, yielded our claims to your attendance, and we trust that the fact that there has been a delay may cause the pleasure of coming, through a delayed realization, to be even greater than it would had you been with us then.

"We, in Southern California, and the Los Angeles Bar Association, can lay no claim to veneration on account of age, because this Association has not yet had the opportunity of celebrating its semi-centennial. But we trust and we hope that we can point with pardonable pride to the fact that members of the legal profession of this community have always loyally advocated and enthusiastically supported the objectives of your Association as stated and set forth in its Constitution.

"One of the topics for consideration at the last meeting of the American Bar Association, under the National Bar Program, was the unauthorized practice of the law. The State Bar of California and the California Bankers' Association have, within the past two months, entered into a compact setting forth agreed proper principles and canons of conduct, and outlining procedure for the adjustment of difficulties which it is believed will be conducive to sound and orderly banking practice, sound and orderly legal practice, and for the benefit of the public at large.

"It may surprise you to know, and we of Southern California can not exactly understand why, that we have the reputation of talking about our climate, which we decline to discuss from now on (laughter and applause); of speaking about mountains and valleys, the fragrance of our flowers, the greatness of our fruits, the loveliness of our ocean, and the blueness of our skies. Of these, since I can not speak of our climate, I shall refrain from speaking, leaving to your generous judgment the proper estimate at the end of this week.

"But we have, speaking not now of anything that may have been given to us by nature, in Southern California a heritage of hospitality that has come to us from the Spanish dons. In the olden days, when distances were entirely figured by the time that it took on horseback, everyone who visited a hacienda was expected to stay until such time as his horse was brought to the front door. We guarantee to you that the horse will never be brought to the door (laughter).

"Mr. President and members of the Executive Committee, it is our desire that our hospitality shall not be limited to any address of welcome or to any words. It will be our constant effort to prove to you by action and by deed that your coming here is to us a great thing, to prove to you by handclasp and by everything that we know that the American Bar Association is indeed welcome. You have done something for us. We

will endeavor to do something for you, and trust that at the end of this week you may leave here with this feeling, that you have had a meeting of accomplishment, that you have found new friends, that you have formed new ties, and that you may hope to renew them at no distant time.

"And, as the foreword in the program of entertainment which we have given to you, translated, reads: 'health and wealth, and a long time within which to spend them'."

Response to Address of Welcome

President Loftin then announced that "this splendid and cordial welcome will now be responded to on behalf of the American Bar Association by Honorable Frederick H. Stinchfield of Minneapolis, Minnesota, a member of the Executive Committee."

Mr. Stinchfield spoke as follows:

"Mr. President and members of the American Bar Association: The extraordinary reputation of Los Angeles and of California for hospitality has been known a great many years; in fact, ever since those days when hereabouts you used the language which Mr. Newlin shows himself so unfamiliar with.

"We come here, therefore, with the certainty of your kindliness, and that certainty makes the task of thanking Los Angeles and California much easier, for when there is certainty of kindliness there can be sincerity of utterance, and with sincerity of utterance thanks can be given much more easily than when thanks are offered out of formal courtesy alone.

"Mr. Newlin has welcomed us for Los Angeles with very kind words. We are perfectly aware that for every word of welcome which he has offered, Los Angeles and California will furnish to us from the East a hundred acts of kindness. We are, therefore, grateful to Mr. Newlin for the very few words which he used, because if we felt that for every word there would be a hundred acts of kindness, and he had spoken longer, we should be overwhelmed with the thought of what you are to do for us.

Kaiden-Keystone Studios

FREDERICK H. STINCHFIELD
Who Responded to Address of Welcome

"You have innumerable advantages here over us from the East. They are so many and you know them so well and we are so sensitive about our inferiority that I shall not detail the very many advantages you have. But there is one particular disadvantage under which we from the East labor, of which I may speak just for a moment. We have now to thank you in Los Angeles for what Mr. Newlin has said and for what, in the way of kindness, you will offer us. You will be able to follow your words, spoken through Mr. Newlin, with the deed. We shall not have that privilege. We can only now thank you in advance, with the certainty that our words, could they be well uttered, would be even more gracious after you had shown your kindness than now. We do thank you as well as we may at the moment, always regretting the impossibility of thanking you again when the week is done.

"But perhaps you may take it as a little proof of our gratitude to you that most of us have traveled several thousand miles to see you. As your guests you can't of course remind us that for nearly all of the years since the Bar Association has been organized you have been traveling East; nor can you, as hosts, say to us that it is just as far from Los Angeles to New York or Minneapolis (I put them in the same breath) as it is from the East to Los Angeles. Of course, you could even go further, were you unkind. You could say, 'It can be readily demonstrated that it is much farther from Los Angeles to New York than from New York here.' May I dwell on that just a moment? We are about, I suppose, to travel at a thousand miles an hour. I am very sure, from what we know of you, that you in this vigorous part of the world expect that result momentarily. Well, now, when we travel a thousand miles an hour it is perfectly clear, I think, that we can about keep pace with the sun. (Somebody on the Executive Committee, or Will Rogers, will probably correct me in my mathematics tomorrow). But let us assume, for the moment, that that is about the speed of the sun. Very clearly, then, in those days one may leave New York at noon and arrive in Los Angeles at noon. Clearly there is, therefore, no distance whatever between New York and Los Angeles. I am sure the brand of political thinkers that we have nowadays would be delighted to demonstrate the accuracy of that to you.

"Now, if you will just turn the picture about, and you travel at a thousand miles an hour from Los Angeles to a convention in New York, you must know, of course, that when you will arrive there, having gone three thousand miles at a thousand miles an hour, nevertheless six hours have elapsed. You get there six hours later. Clearly, then, the same political thinker and talker will tell you that it must be six thousand miles from Los Angeles to New York. Therefore it is clear, isn't it, that were you to go to New York, it takes six

thousand miles? From the East to come to Los Angeles is no distance at all.

"The net result of it all, so far as I can see, must be that we are bound, in those days soon to come, to hold all our conventions in Los Angeles, a place to which we can come in no time at all and from which it will take you many hours to go.

"But when that time comes and we shall be holding all our conventions here, and when all of the conveniences of all the lawyers of the United States will thus be served, we shall come not because of these advantages of excessive speed, these advantages which science will have offered us, but because the hospitality and the kindness of Los Angeles and of California will have compelled us to come. May you not tire of us." (Applause).

Memorial to the Late Charles A. Boston

President Loftin then announced that Hon. Guy A. Thompson, former President of the Association, would preside for the remainder of the session. Mr. Thompson took the chair and addressed the meeting as follows:

"Mr. President, Members of the Executive Committee, Ladies and Gentlemen: If I were to ask you whom we most miss at this gathering, I think the response would be universal, that it is Charles A. Boston. No man within my experience of activity in the Association, which has now been a number of years, has been more diligent or was more effective in the work of the Association than was Mr. Boston.

"As we all know, he was elected our President in Chicago in the fall of 1930, and I think that we will all agree that this Association has never had a President who was more intimately known to its membership, who was more widely respected, more universally loved by the membership, than was Mr. Boston.

"It is my privilege to present to you now the Honorable Arthur E. Sutherland, of Rochester, New York, who will present to you a memorial to our dear, beloved departed President, the Honorable Charles A. Boston."

Judge Sutherland then read the memorial which, on motion, was adopted as the sentiment of the meeting and ordered spread on the record as a part of the minutes of the meeting.

Chairman Thompson then introduced President Loftin as follows:

"The year now drawing to a close has been a year of accomplishment. We must concede, I think, that the Association, during the year that has just passed, has pushed constantly forward, onward, upward, and that it stands today on higher ground than it has attained heretofore. This result has been due in no small degree to the inspiring leadership, to the very unusual executive ability, of our President, and it is a great honor to have this privilege of presenting to you at this moment the Honorable Scott M. Loftin, of Jacksonville, Florida, President of the American Bar Association, who will deliver his annual address."

President Loftin Delivers Annual Address

President Loftin then delivered his annual address on "The Independence of the Judiciary." The very great timeliness and importance of the subject made this address one of particular interest. President Loftin was listened to with close attention and the applause as he concluded showed that the audience was fully in sympathy with his views. The address is printed in full in another part of this issue.

MacEwan Studio

JACOB M. LASHLY
New Member, Executive Committee

At this point Mr. Andrew Christian of Richmond, Va., arose to make a parliamentary inquiry. There were some members of the Association, he said, who felt that the members should have a larger voice in the affairs of the Association than at present. He desired to offer a resolution to direct the General Council as the Nominating Committee, to name several persons for each of the various offices to be filled for the ensuing year, so that a ballot could be taken by the members. He desired to know whether such a motion could be discussed without reference to a committee.

At the suggestion of the Chair, Mr. Christian withheld his motion until the reports of the Secretary and Treasurer could be read and disposed of. Later in the session the Chair announced that if he desired to press the resolution, the Chair would rule that the resolution must be referred to the Executive Committee, without debate, for consideration and report. Mr. Christian took the floor and stated that he had been informed by some friends of the resolution that later in the session there would probably be some accord on a general movement to democratize the bar, and for that reason, he did not care to press the resolution.

Secretary MacCracken then presented his report. He was gratified to state that during the fiscal year just ended the Association had made a net gain in membership of 1,227, making the total membership on June 30, 27,178. During the year 3,692 applications for membership had been received and approved, and 364 applications for reinstatement. Losses through deaths, resignations

and dropping for non-payment of dues, however, reduced the net gain to the figure stated. Commendable work had been done by the Junior Bar Conference, which had brought in over 500 members. The membership work had been carried on by campaigns in various States and by the several sections.

Secretary MacCracken reported the death of 442 members during the past year. Two honorary members, Lord Buckmaster of England and Raymond Poincaré of France, were included in the list. He then gave various details of the operation of his office during the past year, and concluded with a tribute to the co-operation and loyalty of the headquarters staff.

Hon. John H. Voorhees, of Sioux Falls, S. D., was recognized to present the Treasurer's report. Treasurer Voorhees stated that his report was in the form of an audit prepared by certified public accountants at Chicago. The figures covered several pages. The report had been submitted to, and approved by, the Executive Committee. He asked that it be received and filed and a motion to that effect was adopted.

Executive Committee's Report Approved

Secretary MacCracken then presented the report of the Executive Committee. After reading it, he moved that it be considered in two parts: first, all the report covering matter other than proposed amendments to the Constitution and By-laws; and secondly, such proposed amendments. In explanation, he stated that the Constitution and By-laws had different requirements with respect to the vote required to adopt amendments and to take action on ordinary matters. The motion was passed.

The first part of the report was thereupon taken up and adopted. Much of it was contained in the Preliminary Report of the Executive Committee printed in the Advance Program pamphlet, but there were also other matters which had been added later.

It told of its actions at the meeting following the Milwaukee Annual Meeting and also at subsequent meetings, including the appointment of a sub-committee to receive and consider the report of the Special Committee to Study Federal Legislation and Policies as Affecting the Liberties of American citizens—which sub-committee, it was stated, would present a report later during the sessions; its adoption of the joint report on Co-ordination of the Association's Special Committee and the Executive Committee's sub-committee on the same subject as presented at Washington; its increase of the Association's appropriation to further co-ordination, to equal the grant of the Carnegie Foundation; the appointment by the President of delegates to represent the Association at the celebration of Independence Day, Philadelphia, Sept. 17, 1934, of delegates to the Attorney General's Crime Conference, and of the Committee to Assist the Executive Committee in making the award under the terms of the Ross Bequest.

The report also presented the Executive Committee's recommendation of the passage of a pending bill to curb the evils of soliciting Mexican Divorce Practice in the United States; of the Federal Interpleader Bill, as recommended by the Committee of the Insurance Law Section on that subject; of H. R. 6795, Seventy-Fourth Congress, to increase the class of undesirable aliens, particularly criminals, subject to deportation, and for other cognate purposes—with the understanding, however, that the Bill is to be amended to create an Interdepartmental Committee or Board to pass upon cases involving extraordinary hardships; of legislation by the Federal Congress substantially in conformity with the Hague Rules, and subsequent thereto, ratification of the treaty, with reservations similar to deviations from those rules as contained in the legislation to be enacted; and its disapproval of H. R. 5356, to provide for salaried referees and otherwise amend the Bankruptcy Act.

The report further contained the Executive Committee's recommendation to certain Sections for amendment of their By-Laws so as to enable them to provide funds for financing their publications; that the By-Laws of the Section on International and Comparative Law be amended so as to permit the association with the Section of Members of the Bar of foreign countries; that the Junior Bar Conference be made a Section of the Association, but that its By-Laws make no provision for annual dues; that all Sections amend their By-Laws to provide that no person shall be eligible for election as a member of the Council if he is then a member and has been so continuously for three years or more, and also that the office of a Council member who fails to attend two successive meetings of the Council shall be automatically vacated; and that a new Section of Municipal Law be created, as successor to the Special Committee on Municipal Law.

The report then announced the appointment by the President, pursuant to the authority of the Executive Committee, of a Special Committee on Law Lists, composed of the following: Earle W. Evans, Chairman; Arthur E. Sutherland, George B. Harris, John G. Jackson, William C. Ramsey, W. H. H. Piatt and A. K. Gardner; also the authorization by the Executive Committee of the appointment of a Special Committee, consisting of Joseph F. O'Connell, L. Barrett Jones and George M. Morris, to oppose the passage of S. B. 2512, known as the "Black Antilobbying Bill"—it being the Committee's opinion that the bill as now drawn might be interpreted to cover not only what is generally known as lobbying but the professional services of lawyers in representing their clients before Federal Boards, Commissions, and Departments. It further stated that the Committee had authorized the Special Committee on Federal Taxation to submit, in connection with its report, a resolution declaring that the Association "opposes the principle of denying to the citizens of this country a judicial forum in which to seek the return of taxes unlawfully assessed or collected," and announcing its opposition to the pending H. R. 8492, "which would deprive the Federal and State Courts of jurisdiction of certain suits or actions for the refund or credit of taxes heretofore collected or accrued under the provisions of the Agricultural Adjustment Act."

The report announced that the Executive Committee had authorized the appointment of a Special Committee on Duplication of Legal Publications; presented recommendations that various Special Committees, no longer needed, be discontinued; and concluded this part by calling particular attention to the progress which has been made towards

the accomplishment of one of the major objectives of the Association, viz.: the grant by Congress to the Supreme Court of the United States of authority to prescribe general rules of practice and procedure for actions at law and actions in equity.

Adoption of this portion of the report carried with it approval of the various recommendations, legislative and otherwise. The second portion, providing for amendments to the Association's Constitution and By-Laws, so as to abolish the Committee on Publications, and transfer the authority to the Executive Committee, were adopted by the constitutional majorities required, without debate.

Mr. Charles M. Hay arose to inquire if the report of the sub-committee appointed to consider the report of the committee on recent Federal legislation would be available to members before it came up for action. It dealt with important matters and some members would like an opportunity to consider it before being called on for action. Secretary MacCracken replied that, if it was possible, printed copies would be furnished those desiring them.

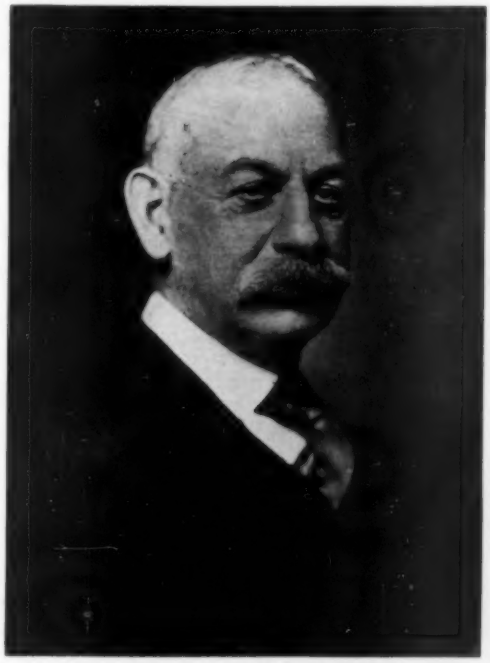
Chairman Thompson then introduced Hon. George T. McDermott of the U. S. Circuit Court of Appeals for the Tenth Circuit, who made a statement concerning the work of the American Law Institute. Judge McDermott was elected a member of the Council of the Institute at its meeting in Washington in May. His report will appear in the next issue.

Mr. Edward T. Lee of Illinois, was recognized to present a resolution which dealt with divorce conditions in Nevada and Florida, and called for investigation of the activities of members of the Association in this field in those States and for appropriate action after proper findings. It was referred to the Executive Committee for consideration.

At the adjournment of the session the State delegations assembled separately and each nominated a member of the General Council and five members of its State Council. The meeting was then declared adjourned.

Address on Late Judge Ross—Prize Essay Under Ross Bequest—Addresses on National Bar Program Topic, Criminal Law and Its Enforcement

THE second session was presided over by Hon. Earle W. Evans, former President of the Association. He recognized Secretary MacCracken, who made a report for the Executive Committee with regard to the session to be held



HENRY W. O'MELVENY

Thursday afternoon and to be devoted to a discussion of "Better Organization of the Bar."

Scope and Authority of Conference Defined

The report stated that the purpose of the Conference was to make known the views and wishes of the members present at Los Angeles on the subject of Bar Coordination, whether they were there as accredited delegates of State or local Bar Associations or as individual members of the Association. In order that the Conference might not be confined to discussion but might afford an opportunity to register the wishes of members, the Executive Committee believed that it should be understood that the session Thursday afternoon was to be a conference and that the offering of resolutions and suggestions pertinent to the subject of the better organization of the Bar and expressing the views of those present thereon, would not be subject to the usual requirements of the Association By-Laws for reference to a committee and report thereon before debate.

"The Association," the report continued, "greatly needs and sincerely desires the full and free submission and consideration of all specific suggestions on the subject; and the expression of the views of those present, by votes taken during the Conference, commending particular suggestions as deserving consideration in the early determination of definite plans to be submitted for the action of the Association members, would appear to be helpful and pertinent. . . .

"It will be understood, of course, that any votes thus taken during the Conference will not be binding upon the Association or upon its whole membership, but will express the sentiments of the Conference as to specific suggestions which will receive careful and fair consideration on their merits by all who are dealing with the subject,

when the whole matter is put in form for action by the Association."

Chairman Evans then introduced Hon. H. W. O'Melveny, of Los Angeles, one of the speakers for the session. The members, Chairman Evans said, are generally familiar with the Erskine M. Ross bequest, but very few of them know much, if anything, about Erskine M. Ross himself. It was therefore a great privilege to learn of this great and good man from one who knew him. It was a real pleasure to introduce Mr. O'Melveny, who would tell us something about him.

Mr. O'Melveny Speaks on "Judge Erskine M. Ross"

Mr. O'Melveny then read his address, which proved to be of particular interest to those present. It will be printed in the next issue.

The next part of the program was the reading of the essay which won the prize under the Erskine M. Ross Bequest. It was entitled "The Barrister and the Solicitor in British Practice: The Desirability of a Similar Distinction in the United States," and the winner was Mr. Benjamin Wham of Chicago. Chairman Evans said:

"With this excellent likeness of this great benefactor in mind, we will now proceed with the ceremony incident to one of his greatest benefactions. The American Bar Association has a special committee charged with the duty of administering this Ross Bequest. I shall now have the pleasure of introducing to you the chairman of that committee, Senator A. L. Scott of Nevada, who will explain more in detail what it is and how it has been administered, and at the close of his explanation will introduce the young man who won the Erskine M. Ross prize for this year."

Senator Scott said: "You have just heard the eleventh paragraph of the will of the late Judge Ross under the terms of which the American Bar Association is called upon to administer a trust, and it will be our aim so to administer that trust that we will ever perpetuate the memory of a man, a lawyer and a judge so highly esteemed by all who had the pleasure of meeting him.

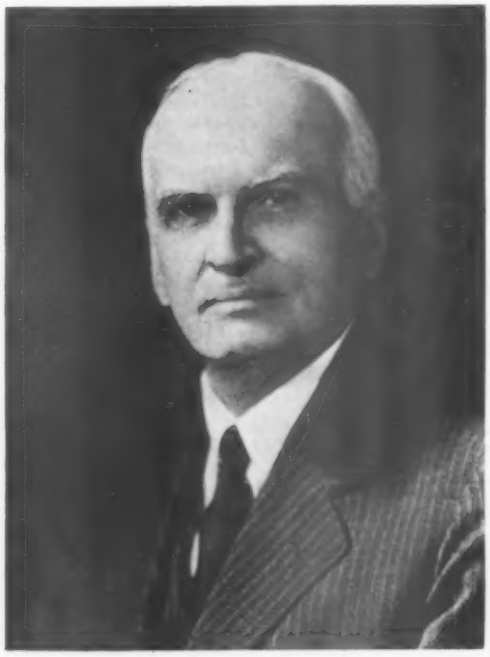
"The money which has come to the Association as the result of that bequest to date has been invested so that the income is sufficient to provide a cash prize annually in the sum of one thousand dollars and to enable us to invite the winner to read the essay personally to those attending the Annual Meeting.

"It is the duty of the Association to announce at each meeting the subject which has been selected as the topic for discussion at the subsequent Annual Meeting, and we take this occasion to announce to you that the subject selected for the prize contest next year is 'The Origin of the Rule Making Power and Its Exercise by Legislatures.' You are doubtless aware that the contest is open to any member of the American Bar Association, and we sincerely hope that each year we will find a greater and more active interest being taken in that contest.

"The subject which was selected and announced at the last Annual Meeting was 'The Barrister and the Solicitor in British Practice: The Desirability of a Similar Distinction in the United States.' The judges selected by the Executive Committee to examine the essays submitted consisted of Dean Roscoe Pound, the Honorable George T. McDermott, and the Honorable Henry Upson Sims. Acting upon their recommendation, the prize for this year has been awarded to Mr. Benjamin Wham of Chicago, and it gives me great

Foster Studio

JAMES H. CORBITT
New Member, Executive Committee



FRANK T. BOESEL
New Member, Executive Committee

pleasure to be able to introduce to you at this time the winner of the contest for this year, Mr. Wham."

Mr. Wham Reads Prize-Winning Essay

Mr. Wham then read his essay, which is printed in full in this issue. Chairman Evans then presented the prize in the following words:

"Mr. Wham, I congratulate you upon the distinction you have won, and pursuant to the authority vested in me by the Executive Committee I now present you with the check of the American Bar Association for one thousand dollars in payment of the prize. Furthermore, and with the fear that you may not find it convenient to retain this check permanently (laughter), I also present you with a certificate which we rather believe will grow in value as the days go by and which will probably be one of the best valued possessions of your estate when you die."

The remainder of the regular order for the afternoon session was under the general heading of the "National Bar Program," and the specific topic for discussion was "Criminal Law and Its Enforcement." This was certainly no new topic in any civilized country, Chairman Evans stated, "but during recent years the people of the United States have felt, and with much reason, need for a revival of the subject and particularly for an intensified effort to solve the crime problems that are now confronting the country. The people have looked to the members of the legal profession for leadership in the warfare on crime believed to be necessary for the protection of life, liberty and property, for which organized society was originally instituted among men." Fortunately there was on hand one whose ability and knowledge of the subject were well recognized throughout the country. He took pleasure in introducing Mr. Earl Warren, Prosecuting Attorney of Alameda County, California, who would deliver an address on "A State Department of Justice."

At the conclusion of Mr. Warren's address, which appears in this issue, Chairman Evans introduced Dean Roscoe Pound of Harvard University. If there was anyone of whom it could be truthfully said that he needed no introduction to the members of the Association, the Chairman said, it was certainly Dean Pound. He therefore presented him, not because it was necessary but because it was an honor to do so.

Addresses on "Criminal Law and Its Enforcement"

Dean Pound then delivered his address entitled "Toward a Better Criminal Law." It is printed elsewhere in this issue. At its conclusion Chairman Evans announced that the next speaker on the program, Mr. George Z. Medalie of New York had been prevented by a professional engagement from being present, but that the meeting was fortunate in having his address read by a former Justice of the Supreme Court of Minnesota, Hon. Oscar Hallam. Judge Hallam then read the address, which is printed elsewhere, and followed it with some comments of his own.

The next address on the program was "The Attorney General's Program for Crime Control," by Hon. Justin Miller, Chairman of the Attorney General's Advisory Committee on Crime. In view of the lateness of the hour it was moved that the address be made the special order for Thursday afternoon at two o'clock. At the request of Mr. Miller the date was changed to the Wednesday evening session.

Next came a general discussion of the papers which had been read.

Mr. Mayer C. Goldman, of New York, said that, with regard to the proposed State Department of Justice plan which he understood was in operation in several of our States and the adoption of which was being contemplated by other States, it seemed to him that the name "State Department of Justice" was somewhat of a misnomer. He was in hearty accord with the plan for the Department of Justice except that, in his opinion, it did not go far enough.

Under the present set-up of the plan, it would seem that it called not for a State Department of Justice merely but for a State Department of Prosecution. If the name was really to represent what should be done in the cause of justice, it seemed to him that such a plan should contemplate and take in State defense as well as State prosecution. It seemed to him quite logical to contemplate the other side of the picture and look at the problem not only from the standpoint of prosecution but also from the standpoint of defense.

Hon. J. Weston Allen, of Massachusetts, said he had been interested this afternoon in the paper which was written by former United States District Attorney Medalie and in the comments that had been made by Judge Hallam. He wished to say a further word in regard to the opportunity for more effective administration of the prosecuting departments of our States. He ventured the thought that the departments of the Attorney General are in most of our States at the present time equipped with latent power to perform and accomplish much that it is now proposed to do by the so-called State Departments of Justice.

Miss Dorothy Frooks, of New York, felt that we were losing sight of a very important point, and that was crime prevention. She believed that if we took all of the money that they have to spend in Washington and, instead of trying to create more prisons and paying for more wardens and for more guards and bringing out the talents of these people who are in the prisons, used it in constructing club houses, community houses, for the youth in the various towns and the various cities in the nation, we would serve three purposes: We would help solve the employment problem, we would provide a forum for expression of opinion, and we would help teach people to think—which was the prime need of the country.

Mr. Arthur E. Briggs, of Los Angeles, said that the discussions at the session all looked to some kind of increase of governmental power. He felt that there were possibilities of utilizing some of the wasted energies of the profession and, to that extent, of escaping from the evils of too much centralization. In Kansas, in early times at least, the law gave an incentive to those who might prosecute those whom the regular officials for one reason or another were not disposed to prosecute, by allowing them their attorney's fees in case their proceeding was successful. He suggested that this was worth considering, in view of the known political connections of some prosecutors. If in successful litigation we would see that a proceeding which was for the public benefit should be paid for out of the public treasury, he thought that we

would probably have a better system of administration than one which depends wholly on the initiative of an already overburdened and perhaps not too energetic public official.

At this point a member presented an invitation from the Bar of San Francisco to hold the 1938 Annual Meeting in that city. The artistically drawn document contained invitations also from the Governor of the State, the Mayor of San Francisco, and leading local organizations. It was received and will be referred to the Executive Committee.

Secretary MacCracken then presented the nominations for the General Council, both to fill vacancies in the 1934-35 Council and for the regular terms in the 1935-36 Council, all of which were unanimously approved. The meeting then adjourned.

Addresses on National Bar Program Topic of Making Disciplinary Procedure More Effective—Judge Parker Makes Strong Appeal—Committee Reports

PRESIDENT Loftin presided at the third session, which was held in the Philharmonic Auditorium. He introduced Mr. Justin Miller, of Washington, D. C., whose address had been postponed in the afternoon to the evening session.

"The gentleman whom I will introduce to you at the present time," President Loftin said, "is Chairman of the Attorney General's Advisory Committee on Crime. Last December the Attorney General called a conference on crime, and this conference was held in Washington with some six hundred delegates present. The conference lasted four days. There was discussion of all phases of the crime problem by those who were most familiar with it, and as a result of the four days' discussion it was recommended that the Crime Conference be continued on a permanent basis, and that the Attorney General appoint an Advisory Committee on Crime, which he did.

"I am very proud and happy to say that I have been a member of that committee ever since it was appointed, but the guiding star of that committee and the one who is really responsible for its leadership at the present time is the Honorable Justin Miller, who is Special Assistant to the Attorney General and Chairman of the Attorney General's Advisory Committee on Crime. It gives me a great deal of pleasure at this time to introduce to you Mr. Miller, who will speak on 'The Attorney General's Program for Crime Control'."

Mr. Miller then read his address, printed elsewhere in this issue, with occasional interpolations stressing or amplifying special points. At one stage he took occasion to criticize the address of Dean Pound in the afternoon as unfair to the younger group of criminal law teachers who are developing in this country. He declared that the best leadership which is being provided in this country at the present time is contributed by a group of young men in the field of criminal law who come from the law schools.

Committee on Professional Ethics Reports

The Chair recognized Mr. Francis J. Carney of Boston, Chairman of the Committee on Professional Ethics, who presented its report. He stated that the Resolution as printed at the head of the report in the Advance Program did not express the thought of the Committee, and, with the approval of the Executive Committee, a substitute had been prepared. It reads as follows:

"Resolved, That the American Bar Association recommends that written bar examinations include questions on legal ethics, and further, that the Committee on Character and Fitness or other like agency orally examine applicants for admission to the bar, touching their knowledge of and their adherence to the ethical principles that should govern their professional conduct."

This was adopted and Chairman Carney then proceeded to submit certain proposed amendments to the By-Laws. The first was that Art. VIII, Sec. 13, Subsection (b) be amended so as to authorize the Committee to express its opinion when consulted by "any public official before whom lawyers appear," as well as when consulted by any member of the Association or by any officer or committee of a State or Local Bar Association. The opinion of the Committee had already been requested by some Government bureaus as to ethical conduct in proceedings before them, and it was to cover such cases that the amendment was proposed.

The second proposed amendment authorized the Committee to hear charges respecting the professional misconduct and—except with a limitation as to the consideration of questions of judicial decision and discretion—the judicial misconduct of any member of the Association upon complaint preferred. The point of the amendment, Chairman Carney explained, was that under the old By-Law the Committee could hear charges and complaints on its own motion. It did not seem proper for a Committee on Ethics to be both accuser and judge and the Committee desired to have this procedure eliminated.

Both of these amendments were approved. Previous to the vote Chairman Carney explained that the Committee had already recommended to the Executive Committee that its powers be broadened with reference to judicial administration and discretion, and in presenting the foregoing amendments it was not to be understood that it receded from the position previously taken in that respect. He then gave a rapid summary of the report of the Committee as printed in the Advance Program.

Hon. Nathan William MacChesney of Chicago, Chairman of the Committee on Canons of Ethics, stated that the report had been printed and it was therefore not necessary to read it. The sole recommendation was that the Committee be continued.

Chairman MacChesney called attention to certain questions that had been presented to the Committee and to the comments on them in the printed report. One of these questions referred to the case of judges serving as reserve officers. The matter was called to the Committee's attention by the War Department, which did not feel that the action

heretofore taken on the subject took all the facts into consideration. Generally speaking, reserve officers are being trained for the contingency of war and are not expected necessarily to spend any large amount of time in special work in peace, except so far as is necessary to make them effective in the particular field in which they are commissioned. The Committee recommended that this matter be given further consideration next year by it and related committees.

Addresses on Making Disciplinary Procedure More Effective

The report was adopted, after which President Loftin introduced Judge Parker. "Many of you," he said, "heard me yesterday afternoon discuss the judiciary of this country and you heard me give my opinion of what I consider to be an ideal judge. I am glad to say to you that I believe the gentleman I shall introduce to you tonight measures up to every qualification which I think it takes to make an able, independent, and courageous judge. He has not only been all of that for many years, but he has been a regular attendant upon the American Bar Association meetings. He has taken an active interest in all of its work and activities, and we have at all times had his support and cooperation. It gives me a great deal of pleasure—in fact, I esteem it a real privilege—to have the opportunity and the honor of introducing to you at this time the Honorable John J. Parker, presiding Judge of the Circuit Court of Appeals of the Fourth Circuit."

Judge Parker was received with applause. There was a certain jovial bonhommie about him which suggested the late Chief Justice Taft to many of the audience. After a few preliminary remarks of a humorous nature, he delivered his address on the subject of "Enforcement of Professional Ethics." It is printed in full in this issue.

President Loftin then presented Hon. Gurney E. Newlin, former President, who presided during the remainder of the session. He said that Judge Parker had given the lawyers of America a lesson which they would take to heart. In his opinion, the legal profession had been too submissive to attack. Why we have not resented these things that have been said against us he did not know. Apparently we have been self-sufficient, knowing, most of us, that what we were doing was with the highest of motives, and ignoring criticism.

That day, however, he said, has passed and gone and we must take stock of the fact that our profession is a problem unto ourselves. And since this is so, and since our procedure for discipline has not apparently been as effective as it should be, the meeting was to hear how to make this procedure more effective. He took pleasure in introducing the President of one of the greatest Bar Associations in America, Mr. Charles P. Megan, President of the Bar Association of Illinois.

Mr. Megan then delivered his address, which told of the problem of discipline in Chicago. It is printed elsewhere in this issue. At the conclusion, it was moved that, because of the lateness of the hour, the address of Judge Orie L. Phillips be postponed until the beginning of the program Thursday morning. This was agreeable to Judge Phillips and the motion was adopted. The meeting thereupon adjourned.

Reports of Sections and Committees—Legislation Recommended and Disapproved—Four Uniform Acts Presented to States for Adoption—Judicial Section Urges Court Decorum

THE fourth session was held in the Biltmore Theatre. Former President Charles S. Whitman presided. He recognized Chairman Justin Miller of the Section of Criminal Law, who presented its report.

The report, he stated, contained a recommendation for action, and he wished to summarize briefly some of the high spots in the Section's work which led up to it. One of its major pieces of work was the participation of its Council as delegates in the Attorney General's Conference. At the request of the Executive Committee a special committee of the Section had been set up to study the Hauptmann trial and the publicity arising out of it. In view of the fact that the case is pending, that committee had simply reported progress and asked that its existence be extended.

A Committee on Personnel, headed by John Barker Waite of the University of Michigan, had been set up a year ago and had prepared and presented an elaborate report, published in advance by special permission from the President and Executive Committee. The Committee had been charged to make a further study and report and undoubtedly a resolution on the subject of personnel would come from the Section at the Association's next meeting. The Committee on Medico-Legal Problems, headed by Dean Albert J. Harno of the University of Illinois, had also presented an elaborate report, including a recommendation for further action on the subject of the establishment of medico-legal institutes, and had also presented the draft of a model statute on the presentation of expert testimony. The report and draft had been referred back to the Committee for further consideration and joint deliberation with the Commissioners on Uniform State Laws.

Resolution Regarding Insanity as a Defense

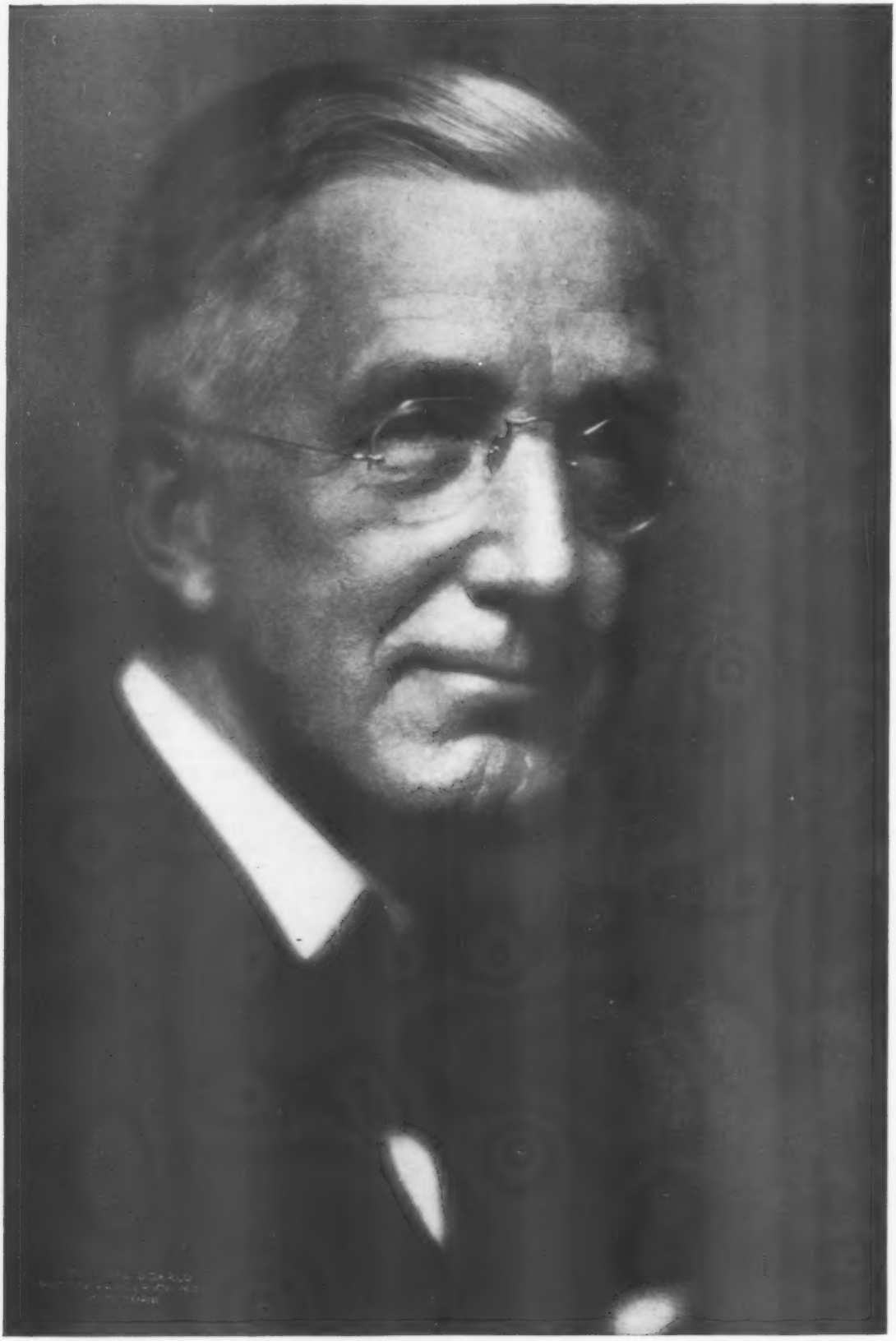
The Committee on Psychiatric Jurisprudence, headed by Rollin M. Perkins, of Iowa, had presented in its report the following resolution, which had been approved by the Section for presentation to the Association:

"Whereas, Scientific knowledge of disorders of the mind and of the part such disorders play in tending to cause anti-social conduct represents a vast and intricate field which is constantly growing; and

"Whereas, Insanity as a defense in the field of criminal law has been abused, resulting in a miscarriage of justice by the complete and unconditional release of defendants who were either completely or partially responsible and who should have been kept either in prison or in an institution where they could be given proper care; and

"Whereas, It is obvious that a lay jury is incompetent to

(*Continued on page* 538)



WILLIAM L. RANSOM
PRESIDENT, AMERICAN BAR ASSOCIATION

OUR NEW PRESIDENT: WILLIAM L. RANSOM

THE new President of the American Bar Association has been engaged actively in its work and familiar with its activities and policies during more than a dozen years. As a member of the Executive Committee for the past three years, he has been identified with the younger and forward-looking elements in the Association leadership and membership, and has been active in behalf of measures designed to bring about a better organization of the Bar and make it fully responsive to the needs and wishes of the practicing lawyers throughout the country. As a lawyer engaged in active practice, he has been eager that the work and the leadership of the Association shall fulfill the best traditions of the profession and reflect soundly the views of its membership.

William L. Ransom was born in Harmony Township, Chautauqua, New York, on June 24, 1883. After his boyhood on a farm, his parents moved to Jamestown, N. Y., where he attended High School, did newspaper work, and was Executive Secretary to the Mayor of Jamestown. He attended Cornell University at Ithaca, N. Y. Upon graduation from the Cornell Law School, he was admitted to the Bar at Rochester, N. Y., in July, 1905, and began the practice of law in Jamestown, as a member of the firm of Ransom & Cawcroft.

In 1907, he went to New York City and was associated for several years with the firm headed by the late William M. Ivins, engaged in general practice. In the fall of 1913, he was the Fusion Republican and Independent Democratic nominee for Justice of the City Court of the City of New York, on the ticket headed by John Purroy Mitchel for Mayor, in which ticket Benjamin N. Cardozo, now of the United States Supreme Court, was for the first time a candidate for judicial office.

Elected to the bench at the age of thirty, Mr. Ransom was active in bringing about improvements in the administration of justice in the Courts of New York. In 1916, as a presidential elector of the State of New York, he voted for Charles Evans Hughes for President of the United States. Mr. Ransom resigned from the bench, after serving three and a quarter years of his ten-year term, and became Chief Counsel for the Public Service Commission of the State of New York. In 1917, he was the Fusion and Republican candidate for District Attorney of New York County.

In 1919, he resumed the general practice of law, as a member of the firm now known as Whitman, Ransom, Coulson and Goetz, with offices in the Bank of Manhattan Tower Building, New York City. His partners are Ex-Governor Charles S. Whitman, Robert E. Coulson, Jacob H. Goetz, Colley E. Williams, and Richard Joyce Smith. The firm has been active in the general practice of the law, and its clients include many large industrial, commercial and operating public utility companies. Mr. Ransom has appeared extensively in the Federal and State Courts in many parts of the country, and has represented municipalities and public boards, as well as private clients.

Mr. Ransom has been active in the American Bar Association since 1920, has served on its General Council as member from New York and on many of its committees, and was Chairman of the Section of Public Utility Law in 1930. He completes this year his third and final year as member of the Executive Committee of the American Bar Association. He is a member of the New York State Bar Association, and has been for many years a member of its Committee on Legal Education and Admissions to the Bar, and its Committee on Uniform State Laws. He is a member of the Association of the Bar in the City of New York, the New York County Lawyers' Association, the Westchester County Bar Association, the Judicature Society, and the American Society of International Law. He was a charter member of the American Law Institute, and served for three years as President of the Cornell Law School Alumni Association. He is a frequent contributor to the law reviews and to legal and economic publications, and has delivered addresses before law schools and many State and local Bar Associations. In the American Bar Association, he has been identified with the movement for the better and more representative organization of the lawyers of the country, and with the formation of the Junior Bar Conference.

Mr. Ransom was married in 1909 to Mary Crawford Hope, of Sunny South, Alabama. They live in the Village of Pelham, in Westchester County, New York, and have four children, Dorothy Hope Ransom, William L. Ransom, Jr., Robert C. Ransom, and Mary Louise Ransom. His clubs include the Metropolitan, Manhattan and Union League Clubs, and the Downtown Association, in New York City; the Seigniory Club and the Gatineau Fish and Game Club, in Canada; the Boca Raton Club, in Florida; the Town and Gown Club, in Ithaca, New York; the Congressional Country Club, in Washington, D. C.; and the American Yacht Club, the Boulder Brook Riding Club, and the Pelham Country Club, in Westchester County. He is a member of The Pilgrims in the United States, the American Economic Association, the National Municipal League, and the Council of Foreign Relations. Since 1913, he has been a trustee of the Academy of Political Science in the City of New York, and has acted as its President.

Judge Ransom was named in June by President Loftin as the delegate and representative of the American Bar at the 1935 annual meeting of the Canadian Bar Association, to be held at Winnipeg, Manitoba, during the week of August 29.

THE BARRISTER AND THE SOLICITOR IN BRITISH PRACTICE: THE DESIRABILITY OF A SIMILAR DISTINCTION IN THE UNITED STATES

Discussion Which Received the Award in the Contest Conducted by the American Bar Association Under the Terms of the Ross Bequest

By Benjamin Wham
Member of the Chicago Bar

A DISCUSSION of the narrow distinction between advocates and attorneys might satisfy the technical requirements of this subject, but would ignore its broader implications. We shall, therefore, first summarize three major criticisms of our profession, then consider the British form of organization with relation to our needs, and, finally, venture to support two suggestions for improvement of the *status quo*.

I.

The first criticism is that we are attempting to standardize the Bar when it is, in fact, widely differentiated by culture, training and function, more especially in the larger cities.[1] This paradox is due to our traditional political philosophy of equal opportunity for all and the devil take the hind-most; and to our historical development from frontier conditions. In those early days a Blackstone was a good start toward a law library, and a lawyer could, by common consent, with the amazing ingenuity of a Houdini, essay the varying rôles of advocate, counsel, legislator, executive, and leading citizen. Gradually the increasing needs of a complex civilization have forced this veritable Pooh-Bah to relinquish to the expert one after another of the more technical functions. Yet, after some vacillation,[2] beginning with an effort to abolish the profession, followed by the adoption of a few differentiations and high qualifications, due in part to the British influence, which were soon swept away by the developing Jacksonian democracy, the upward pendulum swing of reform, commencing just prior to the Civil War, has resulted only[3] in raising minimum requirements for admission. We are thus

1. In Pound, "What is a Good Legal Education," 19 A. B. A. J. 627 (1933), it is pointed out that on the strictly professional side there are the following types of lawyers: (1) trial lawyers, (2) advocates before courts of appeal, (3) "the legal pilot of business and industrial enterprises and the organizer and reorganizer of corporations," (4) consultants in chambers as to litigation, (5) searchers of titles and conveyancers (6) advisers of trustees and trust companies, and (7) commercial adjusters; and that, in addition, there are (8) judges; (9) a great number of our legislators are lawyers, and nearly all bills presented to legislatures are drafted by lawyers; (10) many questions on which the public seeks advice from lawyers are of a political nature; (11) law teachers, and (12) legal scholars.

2. For a general discussion of the subject matter of this paragraph, see Reed, "Training for the Public Profession of the Law," Carnegie Foundation, Bul. 15 (1921), more particularly Chapters III to VII, inclusive. Portions of this discussion may be summarized as follows: There was great revulsion on the part of early settlers, amounting almost to mania, against all rulers, classes and distinctions. This was at the time when English attorneys and solicitors were still under public suspicion and the English courts still exercised active control over the education and admission to practice of attorneys and solicitors. As soon as the colonists abandoned the attempt to prohibit the practice altogether, the same method of control was adopted by the legislatures. The legislatures, in turn, permitted the judges to exercise this function because they were recognized as state officers.

Even so, some distinctions were recognized due in part to the British influence. In Virginia the upper and lower Bars were kept vigorously distinct until 1787. In New York counsellors could not practice as attorneys until 1804. A more favored method of restriction was to create gradations in the Bar, depending upon the amount of education and length of service. This was carried to extreme in Massachusetts where the course of training and practice aggregated 11 years if it included a college education, and nine years if it did not. In New York the aggregate period was 10 years in either case. New Jersey made a distinction between counsellors and attorneys. Pennsylvania had a lower local Bar. Georgia had a higher appellate Bar. Southern planters frequently sent their sons to England to secure a legal education and admission to the Bar in the Inns of Court, who, upon their return, constituted the social aristocracy of the profession.

But these distinctions were swept away by the revived democratic movement following the Revolution and the opening up of new frontiers. It received great impetus from the popular movement resulting in the election of Andrew Jackson. Massachusetts, rebelling from the extreme requirements, which we have noted, sought to overthrow the monopoly of legal practice and authorized litigants to be represented in court by attorneys in fact. This provision was copied in New Hampshire, New York and Michigan. But the substitution of amateurs for professionals was not successful so the agitation took the form of weakening or even destroying educational requirements for admission in much the same way and for the same reason that qualifications for government offices were being reduced. The movement reached its climax with legislation between 1842 and 1851 abolishing all educational requirements in New Hampshire, Maine, Wisconsin and Indiana, in the latter by constitutional provision, and a Utah territorial act of 1852 attempting to abolish the professional Bar. Fortunately, the courts in most instances were able to construe these provisions so as to lessen the damage.

A reaction set in prior to the Civil War, which was greatly accelerated after the war. The war taught the meaning and value of efficiency in public life and the need, even of a democracy, for experts; also, the aftermath of corruption brought reform into fashion, and the orthodox reform program came to include the strengthening of qualifications for admission to the Bar. This was aided by the apparent close relationship between corruption of politicians and the courts and low standards of admission. A notable case was that of the Tweed ring conspiracy in New York. Voluntary bar associations have since then asserted a steady pressure upon courts and legislatures, resulting in a slowly upward movement in Bar admission requirements.

3. It is not strictly true that there are no divisions and gradations at the present time. Weakened forms still survive in New Jersey in a technical distinction between attorneys and counsellors, and in Pennsylvania in the lower local Bars. Reed, "Training for the Public Profession of the Law," 39.

We also have some distinctions between state and federal courts. Thus, a federal district court in Tennessee in 1934 adopted the requirement that the applicant have had two years

left with this heritage of a legally flattened out and standardized Bar, every member of which is licensed to perform any and all of the many divergent types of practice, without regard to his general education, background, technical training or special experience.

Minimum requirements for admission apply equally to all,[4] and little or no recognition is given to the different types of training of applicants. In nearly all states, it is still possible to enter the profession through office study although the number doing so is rapidly diminishing.[5] The orthodox method of preparation is to study in a law school, but here we find wide variations. The chief distinction is between full-time[6] and part-time law schools. The latter, from which come 51 per cent of those seeking admission to the Bar,[7] have arisen to meet the demand for legal education while gainfully employed. The character of their students and faculties, requirements of prelegal education, facilities, methods of instruction, and time devoted by faculties and students to study differ so markedly from the corresponding features of the best full-time schools that the existence of a generic difference has been asserted.[8]

An effort is now being made, under the leadership of the American Bar Association, to cause all law schools to comply with certain standards,[9] which were adopted following the Root committee report in 1921.[10] Nearly all full-time schools and practically no part-time schools have complied with these standards.[11]

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Underwood & Underwood

of prelegal training and two years of legal training, and also have been admitted to the Bar of Tennessee or of another state with equal requirements for at least one year. During this one year period the applicant may be given a junior license. Examination is required by the federal courts in Indiana unless the applicant has been admitted to the Supreme Court Bar of another state on examination or to the Bar of the federal court in some other state. 20 A. B. A. J. 763 (1934).

4. It is not strictly true that the same minimum requirements for admission apply to all candidates. There are a number of states which require longer periods of study in an office or a part-time law school with certain other variations. For a brief summary of all minimum requirements in the United States for the academic year 1932-33, see "Annual Review of Legal Education," Carnegie Foundation (1932), 26.

5. Shafroth, 16 A. B. A. J. 451 (1930), giving comparative figures for four years in Illinois of 3010 applicants from law schools and 131 without law school training.

6. Pound, "What is a Good Legal Education," 19 A. B. A. J. 627, at 631 summarizes the content of a good legal education as follows: "(1) A solid all round cultural training, with the grasp of significant information which such a training involves, but much more with the broadening and deepening of experience and ability to appraise information to which it leads. (2) A grasp of the ends and technique of the social sciences—this only; for beyond that what has been taught in their name has been short-lived. (3) A grasp of the history and system of the common law, of the outline and ends of the legal order, of the theory and ends of the judicial and administrative processes, and of the history, organization, and standards of the legal profession. (4) A thorough grasp of the organization and content of the authoritative legal materials of the time and place and of the technique of developing and applying them."

7. Reed, "Present Day Law Schools," Carnegie Foundation, 120 (1928), table shows attendance in part-time schools of 1027 in 1889-1890 and 16,818 in 1925-1926, and attendance in full-time schools of 3325 in 1889-1890 and 15,090 in 1925-1926. Reed, in "Social Desirability of Evening or Part-Time Law Schools," 7 Am. L. S. R. 198 (1931), at 201: "In the last 40 years, the number of full-time law students has been multiplied six times; the number of part-time law students has been multiplied 26 times. Whereas in 1890 part-time students constituted less than 25 per cent of the total, they constitute today more than 57 per cent." (3) The Bar Examiner, 247 (1934), table at p. 249 gives total of 18,828 attending full-time law schools, and 19,438 attending part-time law schools, or a ratio of 48.8 per cent to 51.2 per cent in the fall of 1932.

8. For a general discussion of the subject matter of this paragraph see Reed, "Training for the Public Profession of the Law" (*supra*), pp. 44 to 64, inclusive. On pages 50 to 54 he points out the following differences between full-time and part-time law schools: (1) Part-time schools teach local and concrete law as against national and generalized law. (2) Many part-time schools employ the text book or dogmatic method as against a critical examination of cases or original sources. (3) An accurate comparison cannot be made between the two types of schools in the amount of time devoted to study as the student in a part-time school is usually gainfully employed. (4) Wide differences in the amount and kind of general education. (5) Faculties of part-time schools are usually practitioners. (6) Many part-time schools are run for profit.

9. The principal standards are: (a) a requirement of at least two years of study in college. This was modified in 1922 to permit the "equivalent" of two years of college work. In 1927 a recommendation was adopted that pre-legal examinations to test this equivalent study be held by the university of the state or by the Board of Law Examiners thereof. (b) Three years study in a full-time law school, or a longer course equivalent in number of working hours in part-time schools. The latter is usually construed as four years of not less than 36 weeks each. (c) An adequate library consisting of not less than 7500 well-selected, usable volumes, together with adequate support and housing. (d) A minimum of three full-time instructors, with not less than one for each one hundred students or major fraction thereof. (e) Adopted in 1929, that law schools shall not be operated as commercial enterprises and the compensation of any officer or teacher shall not depend upon the number of students or the fees received. In 1927 a resolution was adopted by the Council on Legal Education and Admission to the Bar, recommending the establishment in each state where none now exists of opportunities for a collegiate training free or at moderate cost so that all deserving young men and women seeking admission to the Bar may obtain an adequate legal education, and the several states were urged to provide facilities for pre-legal examinations held by the university of the state or the Board of Law Examiners thereof. The association is on record also in favor of Bar examinations. Carnegie, "Annual Review of Legal Education" (1932), 59-61.

10. 46 Rep. A. B. A. (1921), 37-47, 677-692.

11. "Annual Review of Legal Education," Carnegie Foundation (1932), 34-55.

There is no doubt that the movement to improve the standards of law schools has been of great benefit and that these efforts should be continued.[12] However, it should be noted that a conflict in theory has appeared in that it is argued that part-time law schools should be developed in accordance with the conditions which call them forth, rather than made pale copies of full-time law schools.[13]

Another conflict in theory has arisen on the question whether efficiency in the practice of law must be subordinated in a democracy to political considerations. The Root[14] committee is on record as recognizing a distinction in this respect between law and other professions, such as medicine. The argument is that people cannot obtain their full legal rights without the aid of lawyers, that judges are elected or appointed from the ranks of lawyers, that lawyers make up the bulk of state legislatures and Congress and fill many important government offices,[15] and thus that the legal profession differs from others in that it holds this close relationship to the administration of justice and performs an essentially governmental function. It is argued that this peculiar characteristic causes the people to desire to keep close control of the profession, and to insist upon low minimum standards of admission so the door will be open to the average man.[16] This, it is said, has prevented all distinctions, such as that of barristers and solicitors in the British profession, and its counterpart in France of avocats and avoués, from taking root, and also has led to the popular election of judges for short terms. Its origin has been traced in part to the adoption of the theory of separation of powers, enunciated by Montesquieu and other French political philosophers, and to Chief Justice Marshall's ruling that the judiciary has the power to declare legislative acts unconstitutional. There has been a tendency on the part of the American Bar Association in its recent co-ordination of the Bar movement to disregard this alleged distinction between law and other professions.[17] Needless to say, both the proponents and opponents[18] of this theory admit that standards are essential. Whether or not they can be raised to the point required for efficiency need not now be determined. Suffice it to say that for many years there will undoubtedly be a wide difference between minimum requirements and the amount and character of instruction in the best full-time schools.

Apart from the differences in law schools, we are confronted with the further fact that it is impossible for any candidate to learn all the law,[19] and, it may be safely said, it is impossible for any school to teach all the law.[20] This is due to the obvious reason that there are many new subjects and the older subjects are constantly changing and expanding to meet new conditions.

The net result of our present policy is to force legal education and the profession into a strait-jacket.[21] Many examiners are unfamiliar with the new subjects, and many schools do not teach them but concentrate upon the older subjects required for Bar examinations.[22] Furthermore, as one set of questions obviously

12. Compare table of minimum requirements for admission to legal practice by states over several years in the "Annual Review of Legal Education" by Carnegie Foundation, showing comparatively rapid rise in requirements.

13. "Present Day Law Schools," Carnegie Foundation, Bul. 21 (1928), Ch. IX, also Ch. XVI, pp. 287 to 307, inclusive. See also p. 305 for a statement relative to part-time schools being "cheapened copies of the regular full-time model," quoted from "Training for the Public Profession of the Law," p. 402. See also pp. 307 to 316, "Present Day Law Schools," relative to law schools of the mixed type, particularly statement on p. 316. Reed, "Training for the Public Profession of the Law," 50-58, and Reed, "Present Day Law Schools," 301-306. Snyder, "The Problem of the Night Law School," 20 A. B. A. J. 109.

14. The following statement appears in the committee's report:

"If the analogy between the medical and legal professions is perfect, we should recommend that a three years' full-time course should be required, just as the American Medical Association has recommended a four years' requirement for intending physicians. But the analogy is not perfect.

"In the profession of medicine it is necessary to consider only one question with respect to technical education: How can men best be educated to be highly skilled physicians? Nothing need be considered unless it relates to the technical efficiency of the graduate.

"With us, however, the situation is different. The law is a public profession by which, more than by any other profession, the economic life and the government of the country are moulded. The proportion of lawyers in legislative bodies greatly exceeds the proportion of lawyers in the whole population. In executive office they are more numerous than are the followers of any other profession or occupation. Of course all men in judicial office are lawyers. And last, but of great importance, is the influence of lawyers as practicing attorneys in helping to shape the course of judicial decisions and to draft statutory and constitutional provisions which vitally affect the law.

"The principle of opportunity for all applies peculiarly to admission to the legal profession. The physicians may properly exclude all who do not measure up to the strictest requirements of a technical standard. If this results in practically confining the right to practice medicine to men in comfortable circumstances, the public will not complain, for the public must at all costs have highly skilled physicians. But to confine the right to practice law to one economic group would be to deny to other economic groups their just participation in the making and declaring of law. Such a restriction would properly be resented by the public.

"It follows that opportunities must be given to those who are obliged to support themselves during their legal studies. If a man has completed two years, or, better still, four years, of a college course, he will do best if he attends a law school which commands substantially all of his working time. But if he has come to the point where he finds it necessary to support himself, and perhaps his family, he should not be denied admission to the public profession of the law. For such a man the afternoon or evening school is the only recourse." 46 Rep. Am. B. A. 47, 685-687 (1921).

See also Reed, "Present Day Law Schools," 35-38. Reed, "Training for the Public Profession of the Law," 41-43. Flexner, Abraham, "Medical Education in the United States and Canada," Bul. 4 (1910).

15. Pound, "What is a Good Legal Education," 19 A. B. A. J. 627 (1933).

16. Reed, "Present Day Law Schools," 38.

17. "Admission to the Professions of Medicine and Law—a Comparison," July, 1933, "Notes on Legal Education," published by the Section of Legal Education of the American Bar Association.

18. Sanborn, "Training for the Public Profession of the Law," 7 A. B. A. J. 615 (1921). Harlan F. Stone, "Legal Education and Democratic Principles," 7 A. B. A. J. (1921).

19. Reed, "Present Day Law Schools," 113.

20. Green, 20 A. B. A. J. 105 (1934).

21. Reed, "Training for the Public Profession of the Law," 92. Here it is pointed out that in 1877 Dean Langdell of Harvard suggested a division of the profession as a means of reconciling the conflict between state authorities and the schools. He described the type of lawyers that Harvard was endeavoring to train as "counsellors" or "advocates," as distinguished from "attorneys."

22. Green, 20 A. B. A. J. 105 (1934), calls for a complete revamping of the system of admission to the Bar, with emphasis upon individual consideration of candidates. Reed, "Present Day Law Schools," 49, points out that all Boards of Law Examiners are handicapped by the necessity of conducting an identical examination for applicants who have been prepared in a great variety of ways and quotes from Langdell of Harvard as follows: "It is impossible that such examinations should be at once rigorous and just. They must admit the undeserving or reject the deserving; and in the long

cannot be made to fit all types of instruction, Bar examinations have had to be simplified in an attempt to be fair to all candidates.[23] The better students of all types of instruction are usually able to pass, and even the worst students often "get by," through the aid of "cram" courses and a large element of luck in finding one set of questions which they are able to answer, in the numerous attempts permitted by most states.[24] The result is that many are being admitted into the already overcrowded profession who are deficient in culture and special training and are thus difficult of assimilation, while those students who are attempting to meet the increasing demand for specialized knowledge are pursuing a furtive study, repressed by the requirements of a uniform Bar examination.[25]

The second criticism is aimed at the ineffective organization, for the most part, of the profession.[26] This condition was characterized by Dean Pound in 1928 as follows: "In the ordinary American jurisdiction, there is no Bar, in the sense of the Bar in England, or the Faculty of Advocates in Scotland, or the Society of Advocates on the Continent, instead, simply so many hundred or so many thousand lawyers, each a law unto himself, accountable only to God and his conscience —if any."[27] This condition is also only explainable by reference to our traditional political philosophy and historical development. Lawyers, primarily individualists, were aided in this attitude by the early spirit of individual freedom. This attitude is only recently showing some signs of succumbing to the over-powering demand on all sides for organization. This change has been manifested in the legal profession, first, by the organization of voluntary associations, local, state and national; second, by an attempt at federation of local associations under the state organizations; and very recently, by the formation of compulsorily incorporated all-inclusive Bars by legislation or by rule of court.[28] The American Bar Association is assuming greater importance through its program of co-ordination of the work of state and local associations. It has been asserted that one reason for the ineffectiveness of many associations is that they lack selectivity. With no other qualifications for membership than that of being a licensed practitioner, it is argued that the rank and file of members is necessarily composed of heterogeneous, often discordant, elements, capable of taking only the most superficial actions.[29]

The third criticism is that we have no true perspective of the function the profession should perform in the social order.[30] Lawyers individually consider themselves free-lances, with very little obligation to society at large. This attitude, it is charged, has prevented the profession from developing, in an orderly manner, facilities for the proper handling of all legal business, but, it has, instead, like Topsy, just "grow'd." This, it is said, has led to the unrestrained movement of the profession into the more lucrative fields of practice. This, in turn, has resulted in the better practitioners, particularly in the larger cities, forming highly organized firms, composed of specialists, geared to serve large business units and well-to-do clients. As was said by an eminent British judge, the legal profession is open to rich and poor alike—as are the doors of the Ritz Hotel. The poor man is relegated to the insufficiently trained practitioner, who is often too deficient in character to withstand the economic stress to which he is subjected by his inability to gain a foothold in the more lucrative types of practice, or he is unable to obtain any representation outside of the occasional legal aid society.

Proponents of this criticism also point out that the better practitioners are forsaking trial and appellate court practice. This, it is said, has caused the courts to be filled with poorly trained advocates, from whose ranks the judges are chiefly chosen, so that an inferior machine is provided for the making of common law and the enforcement of law generally. This, in turn, is blamed for the complexity, confusion, and cost of the law. It is asserted that this has led to the creation of our many boards and commissions which are performing semi-judicial functions.

It is further said, that, because the abler members of the Bar represent almost exclusively the wealthy element in the community, their views are colored by their constant efforts to protect the interests of such clients, and they are thus unable to give the impartial, statesmanlike leadership which the profession has traditionally supplied.[31]

II.

With these criticisms in mind, let us turn to the British profession.[32] It is divided into two distinct branches whose members are known as barristers and solicitors. Barristers enter the profession as members of one of the four Inns of Court, namely, Lincoln's, Gray's, Middle Temple and Inner Temple.[33] The gradations of members of each Inn are benchers, barristers and students.[34] Traditionally, the first requirement for

run they will be sure to do the former." See "Annual Report of the President of Harvard College" (1876-77), p. 97.

23. Green, 20 A. B. A. J. 105 (1934).

24. "Admission to the Professions of Medicine and Law—a Comparison," July, 1933, *supra*, note 20, table, p. 12, for admissions in 1932. These show that out of 19,470 taking examinations 45 per cent passed. However a summary of applicants over a period of years in six states shows that by repeated attempts 92 per cent passed. *Idem*, p. 5.

25. Reed, "Training for the Public Profession of the Law," 58, 402.

26. Reed, "Training for the Public Profession of the Law," 203-239, 391; Reed, "Present Day Law Schools," 21-44; Wickser, "Bar Associations," Cornell Law Quarterly, Vol. 15, No. 3 (April, 1930).

27. Pound, Speech at Brooklyn Law School, Nov. 10, 1928, quoted by Wickser, *supra*, note 26, p. 2.

28. Wickser, *supra*, note 26, p. 1, *et seq.*

29. Reed, "Training for the Public Profession of the Law," particularly 238, 239.

30. For a general discussion of the subject matter of this criticism, see Llewellyn, "The Bar Specializes—With What Results?" Annals Am. Acad. Pol. Sci. (May, 1933); also, Wickser, *supra*, note 26.

31. Rogers, "Some Great American Lawyers," 37 Com. L. J. 558 (1932).

32. For a short description see "The Professions," by Carr-Saunders and Wilson (1933), particularly pages 1 to 65; see also generally: Sir Frederick Pollock, "Essays in the Law" (1922); Sir William Holdsworth, "The History of English Law," 3d Ed. (1924), more particularly, Vol. VI, p. 431 *et seq.*; Pollock and Maitland, "History of the English Law," 2d Ed. (1898); E. B. V. Christian, "Short History of Solicitors" (1896). For an adverse criticism, see William Durran, "Bench and Bar" (1926). For the sake of brevity we shall discuss the two branches chiefly as they exist in London.

33. Pollock in "Essays in the Law" (1922), 134, characterizes these bodies as "a survival of medieval republican oligarchy, the purest, I should think, to be found in Europe."

34. The Inns are voluntary unincorporated societies. The benchers form the governing bodies and fill vacancies in their number from among the barristers. In practice, the benchers consist of the senior members including any judges who may belong to the Inn. Carr-Saunders and Wilson, "The Professions," 7. No member, not even a judge, has the right to be called to the Bench. Decided in 1845 in the case of A. Hayward, Q. C. The benchers confer the degree of "barrister-at-law" by calling one of their students to the Bar. By agreement between the benchers, the qualifications for call are the same in each Inn. Carr-Saunders and Wilson, "The Professions," 7. The benchers have the exclusive right to disbar and disbench. The legal status of the Inns is wholly anomal-

admission to one of the Inns of Court as a student is that he be a "gentleman of respectability."[35] From the benchers, each Inn has selected representatives to the Joint Council of Legal Education[36] which has almost exclusive control of the education, admission and discipline of barristers. The requirements of law study for admission to practice as a barrister are the "keeping" of certain terms, which means dining at an Inn a certain number of times, and passing the examination given by the Joint Council.[37] As a practical matter, however, the competition among barristers is so keen that many of them obtain a very fine cultural and technical training and thereafter read in chambers.[38] The total fees paid by a student to his Inn and to the government to obtain admission to the Bar, not including expenses which he may incur in attendance at a university or law school, is approximately £325, of which he may, under certain conditions, obtain refunds of varying amounts.[39]

Solicitors have a voluntary organization known as the Incorporated Law Society which, after many years of effort, by various acts of Parliament, has been given much the same control of the education, admission to practice and discipline of its members as has traditionally been held by the Inns of Court.[40] A surprising fact is that the minimum requirements for admission as a solicitor appear to be higher than those for admission to the Bar, as there are requirements for study, three examinations, and five years of apprenticeship—three if a university graduate.[41] Also, the fees payable to the Society and government and for services under articles are higher than those paid by candidates for the Bar.[42]

Barristers have the exclusive right of audience in the Court of Appeal, the High Court (but not in bankruptcy cases) and certain other courts and bodies. Solicitors have concurrent right of audience in bankruptcy cases in the High Court, County Courts, and certain other inferior courts. Barristers have concurrent right to engage in certain types of office practice, such as conveyancing and drafting.[43] In those courts in which barristers have the exclusive right of audience, they can appear only upon briefs from solicitors. Furthermore, they are not permitted to form partnerships with each other or with solicitors. Solicitors are thus in direct contact with clients, and advise them in the selection of barristers, and generally in their business enterprises.[44]

The chief arguments in support of the British distinction are: first, due to the prohibition of partnerships between barristers and between barristers and solicitors, the solicitor is free to select the most suitable counsel for each case, thus giving better service and encouraging further specialization;[45] second, due to the prohibition of contact between barristers and clients, barristers constitute a class of practitioners between the general attorney for clients and the court which can, as officers of the court, view all the facts of a case dispassionately and expertly and so discourage unfounded suits;[46] third, that this distinction provides a relatively small, specialized class of experts in trial and appellate law and procedure, including the judges, as they are selected from the leading barristers, and, because of the greater expertness of both Bench and Bar, a su-

ous in that they enjoy the privileges but are exempt from the obligations of an ordinary voluntary incorporated society. Carr-Saunders and Wilson, "The Professions," 14. It should also be noted that there were formerly Chancery Inns, largely occupied by attorneys, which have now all been dissolved.

35. A student cannot practice most of the other professions and cannot engage in a "trade." He may, however, support himself in teaching or journalism. Carr-Saunders and Wilson, "The Professions," 8.

36. The Council was set up in 1852 by agreement between the four Inns to superintend the education of students. It consists of 20 benchers, five appointed by each Inn. Before holding examinations, the Council provides for the giving of lectures and appoints a director of studies to assist students in their reading, but attendance at lectures is voluntary. Many students attend classes of private-venture coaches. Carr-Saunders and Wilson, "The Professions," 8.

Barristers have jealously guarded their independence. A few years ago there was an agitation for the establishment of a legal university, but the Bar looked upon it as a threat to its independence and refused to be a party to the scheme "so far as the same involves the displacement of the present system of legal education now carried on by the Council of Legal Education and the Law Society." Annual Statement of the Bar Council for the year 1903-04, p. 5. Thus no legal university was founded. Solicitors obtained an act in 1922 making attendance at a school of law compulsory. The Bar has been content to leave things as they are. It is contended that in both branches of the profession theoretical training is too narrow and that at the Bar the absence of compulsory reading in chambers is indefensible. Carr-Saunders and Wilson, "The Professions," 50-51.

37. A student must "keep" 12 terms in his Inn. He does this by eating six dinners in the Inn during the term—three times if a student in a university. There are four terms in a year.

38. Carr-Saunders and Wilson, "The Professions," 9, 47.

39. Walker, 20 A. B. A. J. 239 (1934).

40. Carr-Saunders and Wilson, "The Professions," 19. A committee of judges, consisting of the Master of the Rolls, the Lord Chancellor and the Lord Chief Justice, has power in many cases to disallow the regulations made by the Society. The Society has its own school in Chancery Lane and most of the universities and colleges have approved schools.

It should be noted that barristers have a more democratic organization, known as The General Council of the Bar, or Bar Council. It is recognized as the accredited representative of the Bar, subject, of course, to ultimate control by the benchers, which is seldom exercised. See generally, Carr-Saunders and Wilson, "The Professions, 17 *et seq.* There are various Circuit and Session Bars outside of London, which make their wants known chiefly through the Bar Council. Carr-Saunders and Wilson, "The Professions," 15 *et seq.* It should also be noted that solicitors outside of London are federated in an organization known as the Associated Provincial Law Societies, or in the Yorkshire Union of Law Societies, or both. The Law Society makes it an invariable practice to consult these federated bodies before taking any important step affecting the interests of the profession. Three-fifths of all country solicitors belong to the Law Society.

The Law Society is seeking to obtain an Act of Parliament making membership in the Society compulsory for all solicitors. Carr-Saunders and Wilson, "The Professions," at p. 28 give as their opinion that this would be a mistake, due to the fact that *a voluntary association does much better work, and state that they fear the Society might take on the character of an Inn of Court with the same danger of becoming inert.*

41. Carr-Saunders and Wilson, "The Professions," 19 *et seq.*

42. Walker, 20 A. B. A. J. 239 (1934).

43. Those barristers who engage in conveyancing and drafting are often specialists as contrasted with solicitors who perform this function in conjunction with a wide range of practice.

44. Carr-Saunders and Wilson, "The Professions," 9, 21-22.

45. Carr-Saunders and Wilson, "The Professions," 11, 54-55; Kales, "A Comparative Study of the English and the Cook County Judicial Establishments," 4 Ill. L. R. 303 (1909). In the latter article it is pointed out that English judges are appointed for life from the recognized leaders of the Bar, and are usually not promoted, so that, by remaining in one court they become specialists. There is also an apt description of the division of the duties between solicitors and barristers and the specialization in various courts by barristers. See also Kales, "The Economic Basis for the Society of Advocates in the City of Chicago," 9 Ill. L. R. 478 (1915).

46. Carr-Saunders and Wilson, "The Professions," 55; Kales, "A Comparative Study . . . . ," 4 Ill. L. R. 303; Bryce, "The American Commonwealth," Vol. II, p. 510.

perior machine is provided for the making of common law and the enforcement of law generally;[47] and fourth, that the organization of the two branches of the profession, is much more effective, due to the close control which they have over their members.[48]

We would not be understood as assuming a critical attitude toward the forms and methods of the British profession. Our debt is too large. We stand in awe at the genius of a people destined to be great who, from the raw materials of their growing needs and with little aid from the already developed Roman law, forged the original theory and system of the common law. This was made possible only because of the great legal minds which were developed in and about the Inns of Court. The members of the British Bar may justly be proud of their position as the inheritors of a great tradition.

Nevertheless, it would appear that the adoption, without more, of the British distinction would fail to strike at our basic needs, for two reasons: The first is that it appears to be illogical in this country at this time to divide the profession only between advocates and all others. We suggest that the legal recognition of this distinction was due, in part, to the historical accident[49] that the Inns of Court were in possession of the field at the crucial moment, filling a real need in supplying the technical instruction, which the universities—teaching Roman law and unsympathetic with the newer, cruder common law then being created almost *in vacuo*—failed to supply.[50] The superior character of the members of the Inns over that of attorneys,[51] and the cost of a membership and education in one of the Inns, gave impetus to the growing functional differences based on the ancient distinction between "friends" and more expert pleaders. Members of the Inns of Court early began to specialize in the theory of law and in advocacy, which was then the most desirable part of the practice. Attorneys were left to specialize in the more formal part of the law and in pleadings and in contact with clients. This differentiation led, in the reign of Elizabeth, to the definite separation of the members of the Inns of Court from attorneys.[52] Had there been facilities for legal instruction in early England comparable with those which rapidly developed in this country, designed to meet the needs of every pocketbook, this separation might never have occurred. There may be some analogy between the British educational situation at that time and our present division between full-time and part-time law schools, but this would not logically point to a separation of the functions of advocates from those of all other practitioners here and now.[53]

Our legal practice is very different from that which existed in England when this distinction was legally recognized. Large scale business has opened up many fields of law having little relationship to litigation as it is commonly understood. Even in those fields which are more closely connected with litigation, the practice has come to be highly specialized. In order to understand the law and procedure applicable to a particular field, it is often necessary for an advocate to be thoroughly conversant with the office practice in that subject. An extreme example is patent law, which has been recognized as a specialty by the public, as well as lawyers, for many years, because the substantive and adjective law are both so interwoven with scientific principles that advocates unfamiliar with this field are of little value. This is true of the reorganization of large business units, either in equity or in bankruptcy, where general advocates are unable to comprehend the basic economic principles underlying the drafting of a suitable plan without much special preparation. Income and other tax litigation, utility rate litigation, obtaining the approval of security issues by "blue sky" commissions and the new Securities and Exchange Commission, and many other matters, involving specialized procedure as well as law, support this proposition. This increasing need for technical knowledge has led in many fields to the subordination of the traditional rôle of the advocate as a specialized actor, skilled in the nice technicalities of the law and the psychology of courts and juries.

It has caused many British barristers to specialize in appearances before particular courts and commissions and a limited portion of the law.[54] It has also

47. Kales, "A Comparative Study . . . . ," 4 Ill. L. R. 303, and "The Economic Basis . . . . ," 9 Ill. L. R. 478 (1915).

48. Kales, "A Comparative Study . . . . ," 4 Ill. L. R. 303, and "The Economic Basis . . . . ," 9 Ill. L. R. 478 (1915).

49. For a discussion of the reasons for the separation of advocates from attorneys, see Carr-Saunders and Wilson, "The Professions," 29 *et seq.*, and Holdsworth, "The History of English Law," Vol. VI, p. 431 *et seq.*

50. In continental Europe the introduction of a settled system of law coincided with the rise of the universities. They were the medium through which the civil law and the canon law were diffused throughout the medieval world; and the civilians and canonists, who had graduated at the universities of medieval Europe, became the practitioners before the courts, both civil and ecclesiastical. In England the jurisdiction of the ecclesiastical courts was strictly confined, while the English civil courts, the courts of admiralty alone excepted, resisted altogether the introduction of the Roman code. They proceeded instead to create and develop the native "common law" out of indigenous teutonic elements. But this "common law" proved unsystematic and couched in a barbarian tongue and was wholly outside of the subject comprised in the medieval conception of learning. Consequently, an alliance between the legal profession and the universities never came about in England, save in the relatively unimportant sphere of the ecclesiastical and admiralty courts. Only a doctor of laws of one of the English universities could be admitted to practice as an advocate before the ecclesiastical courts. Advocates were the only members of the English Bar conversant with the civil law and, therefore, were the only one admitted to practice in the admiralty courts. But the advocates and the system they stood for have since passed away. In the nineteenth century, the court of admiralty became merged in the Supreme Court where barristers have sole right of audience while the ecclesiastical courts were thrown open to members of the common law Bar. Carr-Saunders and Wilson, "The Professions," 29 *et seq.*

51. Parliament complained of the great number of attorneys "ignorant and not learned in the law." Carr-Saunders and Wilson, "The Professions," 39. "But in our age there are stepped up a new sort of people, called solicitors, unknown to the records of the law, who, like the grasshoppers of Egypt, devour the whole land; . . . . " Quoted by Holdsworth, "History of English Law," Vol. VI, p. 454.

52. In 1653 Lincoln's Inn ordered specifically that attorney's clerks and solicitors were not to be called to the Bar. Holdsworth, "History of English Law," Vol. VI, p. 441. But the exclusion of practicing attorneys from the Inns of Court was not definitely attained until the following century. *Idem*, 442.

53. If we are to divide the profession into two groups only, it has been suggested that, instead of adopting the British distinction, it would be more logical here and now to make the division along educational and cultural lines. It is suggested that a start may be made by the formation of bar associations with restrictive memberships, recognizing the "inner Bar," which now exists. The selective types of organizations in other great professions, such as the powerful engineering societies, are pointed to as examples. It is urged that such a division would go far toward solving the problems of a unitary Bar, such as that of part-time law schools. Reed, "Training for the Public Profession of the Law," 237-9.

54. There are specialisms within the Bar itself. There is a Chancery Bar, a Common Law Bar, an Admiralty Bar, a Patent Bar, a Commercial Bar, and other smaller specialisms. As the work of the barrister includes, in addition to advocacy,

led to periodic suggestions for "fusion" of the two branches in order to avoid the expense of two lawyers. This suggestion is supported by many solicitors who feel a certain stigma still clings to their branch of the profession because of its limitation.[55] It undoubtedly will appeal to the more democratic laity, especially since many solicitors are now as highly educated as are barristers.[56] However, well informed opinion[57] does not support this suggestion, as there is sufficient need for the specialized advocate, even in countries which do not recognize this distinction, to warrant its retention, subject, perhaps to gradual erosion of the Bar's exclusive right and to lowering of the requirements for transfer from one branch to the other.[58]

The second reason is that the British profession is subject to the same criticisms as is ours, with variations. We suggest that its superiority in some respects is due, in part, to other reasons than the division into two branches. If the members of one or both branches are more homogeneous, we suspect that this is due, in part, to the higher cost of admission, and to the close control which the two organizations exercise over their members. Insofar as the Bench and Bar are more proficient in litigation, we suggest that this is due, in part, to the feature of the appointment of judges for life, enabling them to become specialists.

However, periodically, the criticism is made that the whole of British procedure—and this would include ours—is based on an assumption which is completely out of date, in that it presupposes a *mala fides*[59] in the parties. This, it is said, has resulted in elaborate and costly[60] methods of fact finding, which are unnecessary in ordinary litigation and the average commercial action. The creation of boards and commissions in both countries, having power to ascertain facts, with less regard for technical rules of evidence, and to take action, not within the ordinary sphere of courts, is, in part, in protest against the too perfect[61] system of courts and advocates. The public appears to be willing to sacrifice some of their perfection in order to obtain speedier results at lower cost. However, the legal profession should not receive too great a share of the blame for this development, as it is, in part, to meet the increasing demands for services which combine administrative and judicial characteristics.[62]. It remains to be seen whether we can sufficiently reconcile our theory of separation of powers with the necessity for meeting these demands to permit these new boards and commissions to be absorbed into the judicial system. But the outcome does not seem to depend upon our adoption of the British distinction.[63]

The British profession, as well as ours, is criticized for its failure to provide adequate service for the middle class—the system being principally geared, as

consultations with solicitors in settling pleadings and other administrative office matters, he may, when his reputation is sufficiently established, announce that he is no longer prepared to take chamber work. He does this invariably by applying to the Lord Chancellor to be recommended to the King for appointment as one of His Majesty's Counsel—"K. C." for short. This dignity has ceased to have any connection with the litigation of the Crown. K. C.s formerly wore silk robes, and therefore, this is sometimes called "taking silk." While their gowns are no longer of silk, except in the House of Lords, they are still made of different material from the "stuff" gown of the "junior barrister." It is a rule of etiquette that no "silk" should appear in any case without having a member of the junior Bar briefed with him. Carr-Saunders and Wilson, "The Professions," 12-13. Kales, "A Comparative Study . . . . ," 4 Ill. L. R. 303 (1909), gives the following quotation from an article in 18 Greenbag, 444, "the common-law barrister passes his life in jury trials and appeals. The chancery barrister knows nothing but the equity courts. Then there is what is known as the Parliamentary Bar, practicing entirely before Parliamentary committees, boards and commissions." He also gives the following quotation from that article, describing the day of a busy English barrister: "One very eminent K. C., who is also in Parliament, rises in term time at 4 A. M., and reads his briefs for the day's work until 9, when he breakfasts and drives to chambers. Slipping on wig and gown at chambers and crossing the Strand, or arraying himself in the robing room of the law courts, he enters court, at 10:30, takes part in the trial or argument of various cases until 4 o'clock—and *often has two or three going on at once, requiring him to step from court to court to open, cross-examine or close, relying upon the juniors and solicitors in each case to keep it going and tell him the situation when he enters to take a hand.* From 4 to 6:30 he has consultation at his chambers at intervals of 15 minutes, after which he drives to the House of Commons, where he sits until dinner time arrives at 8:30. If there is an important debate on, he returns to the House, but tries to retire by midnight for four hours' sleep. Naturally the long vacation alone makes such a life possible for even the strongest man."

55. Carr-Saunders and Wilson, "The Professions," 51 *et seq.*

56. *Idem*, 19 *et seq.*; Walker, 20 A. B. A. J. 239 (1934).

57. Carr-Saunders and Wilson, "The Professions," 54.

58. *Idem*, at p. 54 it is suggested that there are sound arguments for extending the jurisdiction of those inferior courts where solicitors have concurrent right of audience with counsel and for simplifying the machinery for proving matters of fact, even in the High Court The authors state that the history of the legal profession is in large part the story of an attempt to break down the barriers with which the various legal specialisms were surrounded in medieval times and conclude that there is *no reason why this attempt should not be carried farther by permitting transfer from general practice to advocacy and back again without an examination or a waiting period, but simply require that all who specialize in advocacy would be forbidden to engage in general practice and t'ose in general practice would be forbidden to engage in advocacy.*

59. Carr-Saunders and Wilson, "The Professions," 51 *et seq.*

60. "My decided opinion is, as I have often remarked to you on several occasions, that the English procedure, excellent though it may be, is too dear, and that in England constitutes an 'article de luxe.'" Translation of a letter from Maitre Leópold Dor of Paris to the London Chamber of Commerce printed as Annex 2, p. 13, to the report of the London Chamber of Commerce Sub-Committee on Expense of Litigation (1930). It should be noted, however, that in the above report the opinion is expressed that remuneration of barristers and solicitors is reasonable. See page 3 of the report.

61. A point which the legal profession fails to appreciate is that the public would be prepared to sacrifice some of the "excellence" of the English procedure in return for greater cheapness. The public demands simplicity and intelligibility even at some sacrifice of excellence. Carr-Saunders and Wilson, "The Professions," 52-53.

62. Pound, "Justice According to Law," 1914, 14 Col. L. Rev. 1, 12, 19, 22, 27. Jackson, "The Bar and the New Deal," 21 A. B. A. J. 93 (1935), at p. 95: "Chief Justice Hughes, in sustaining the power of an administrative tribunal to make final decision of facts (Crowell *vs.* Benson, February, 1932) referred to 'the obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method' of adjudication. And in the same case Mr. Justice Brandeis said: 'With a view to obviate the delays incident to judicial proceedings the act substitutes an administrative tribunal for the court.' And Chief Judge Crane of the New York Court of Appeals has said, 'When, therefore, we pass fact-finding from the courts to the commissions of all kinds and leave to them the final determination of the facts unhampered by our technical rules of evidence, we have demonstrated in a very practical way the popular discontent with the ordinary method of determining much of our litigation. . . . . The way is left open for the determination of many matters by departments or commissions, or the administrative bodies.'"

63. We cannot refrain from saying, in passing, that lawyers should not be entirely blamed for the complexity of the law. Law is subservient to the demands of the people, their government and their business, and necessarily becomes increasingly complex to match the complexity of these demands. While we are admittedly living under the handicap of an elective judiciary for short terms in most jurisdictions, yet we have some great jurists, and our universities and law schools have produced a brilliant array of legal scholars who, indi-

in this country, to serve the well-to-do,[64] while the very poor[65] are, perhaps, better provided for under the British laws than in this country. And there is the same criticism of the British profession, as of ours, that the leaders, being in the pay of the more wealthy element of the community, are unable to give impartial leadership.[66] A reply is made that this does not apply to the Bar because of its independence from clients.[67] However, necessarily barristers are powerfully influenced by close contacts with the solicitors who supply their briefs. The importance of solicitors has been greatly enhanced, as they are the chief beneficiaries of the new types of practice accompanying the rise of large scale business. It is not without reason that they were able in the early part of the eighteenth century to assume the title of "gentleman practisers."[68] The dependence of barristers upon solicitors is aptly set forth in the Gilbert and Sullivan opera in which the Lord Chancellor explains that, as a struggling barrister, sans brief, his way to the bench was paved by his successful marriage to the "rich attorney's elderly, ugly daughter."[69]

Two considerations militate against our adopting any distinction. The first is the opposition to specialization,[70] particularly early in the practice. This feeling is, no doubt, encouraged by a certain nostalgia for a somewhat idyllic, almost legendary, conception of our great lawyer leaders of the past. Yet, as we have seen, specialization is being forced upon us, particularly in the larger centers. In mitigation, it may be pointed out that a specialist has opportunities to step outside of his field, and, because the law is a seamless web, he is forced into contact with a wide range of law and practice. At the same time, there is also need for general practitioners. The strength of this demand is illustrated by the rise of the "common solicitor" in England when attorneys were restricted to practice in one court.[71] They are necessary to render a multitude of general services and to assist in the selection of specialists. Many practitioners will, no doubt, continue to render a more generalized service. Specialties themselves change and new ones arise, particularly during economic cataclysms, making it imperative for the inhumanly expert practitioner to place varying degrees of emphasis on different phases of his specialty or even evolve with it into a new phase. For this reason, in the event any legal divisions are established, the requirements for transfer from one field to another should be as flexible as possible, consistent with the protection of the public interest.

The other is our traditional aversion to all divisions. Any suggestion for change will, no doubt, be opposed as an abrupt departure from our political philosophy. However, times, conditions, and even the philosophy of a people change over long periods. New forms and methods evolve, and, eventually, those survive which best fill these changing needs. There are many illustrations. One is the perpetual struggle between the principles of stability and change, causing periods of strict interpretation, in which the paramount interest is in the general security, to alternate in legal history with periods of liberal interpretation, accompanying readjustment and growth.[72] Another is the triple shift of emphasis in government, in this country, first to the legislature, then to the judiciary and now to the executive.[73] Another is the change in the character of the work and status of the average citizen. As we have seen, frontier conditions encouraged a spirit of independence and self sufficiency, but the rise of large scale business has brought about the employment of whole sections of our population, and gradually, a new sense of dignity is attaching to the status of wage earners. Perhaps a closer example is the rise of barristers and solicitors, the absorption of the early ecclesiastical advocates and of serjeants, and the fusion of attorneys and solicitors in England.[74] In the same manner, the increasing demand for specialization, acting as a strong *vis a tergo,* is forcing us, willy-nilly, into new forms and methods.

III.

We, therefore, venture to support two suggestions for improvement of the *status quo:* First, if we assume it is presently inadvisable or impracticable to adopt the British form of specialization, or, perhaps any delimitation of separate fields of legal practice, by a *tour de force,* we can at least refrain from hindering the natural evolution of the profession. We are doing this by our insistence that all candidates take the same Bar examination. The difference in instruction and the demand for specialized training, already noted, should be recognized. It has been suggested that a start toward this may be made by providing optional[75] questions. If this is done, law schools will no longer be repressed by the necessity of preparing all candidates to pass a uniform examination. Even now, some of our leading

vidually for many years through analysis and criticism of the theory and practice of law, and, more recently in a co-operative enterprise, the restatement, have done and are doing much to remold, clarify and direct the growth of our law.

64. Carr-Saunders and Wilson, "The Professions," 472.

65. *Idem,* 482-3.

66. *Idem,* 472, *et seq.*

67. Kales, "A Comparative Study . . . . ," 4 Ill. L. R. 303 (1909), and "The Economic Basis . . . . ," 9 Ill. L. R. 478 (1915).

68. Shortly after the Act of 1729, which virtually brought about the fusion of attorneys and solicitors, a voluntary association was founded, known as "The Society of Gentlemen Practisers in the Courts of Law and Equity." Carr-Saunders and Wilson, "The Professions," 44-50.

69. Trial by jury.

70. Llewellyn, "The Bar Specializes—With What Results?", Annals Am. Acad. Pol. Sci. (May, 1933).

71. Carr-Saunders and Wilson, "The Profession," 37 *et seq.*

72. Pound, "Interpretation of Legal History," 1 (1923).

73. Pound, "The Lay Tradition of the Lawyer," 12 A. B. A. J. 153 (1926).

74. See notes 50 and 68.

75. Alfred Z. Reed of the Carnegie Foundation, to whom this article was submitted for criticism, makes an interesting suggestion in a recent letter of a method of providing a fairer test for full-time and part-time law school graduates, as follows: "A step which, as it seems to me, could be profitably taken in the near future, would be simply to tone up Bar examinations, by 'keying' them to the type of instruction which applicants have received. At present we proceed on the tacit, but quite baseless, assumption, that all applicants are prepared in about the same way. 'Optional questions' would be a start in the right direction. What I should eventually like to see are alternative groups of questions or tests—A and B. They might have some features in common, but, as a whole no graduate of a night law school could pass A, and no graduate of a full-time law school could pass B. A would be full of principles of very great importance (including a highly critical attitude toward the law as it is) which night law schools do not teach or inculcate. B would be full of a lot of 'information' and minor technicalities (some of them of considerable practical importance, especially in certain branches of practice), which full-time law schools properly ignore."

In "Training for the Public Profession of the Law," pp. 268-69, Mr. Reed summarizes Dean Langdell's position that there is that in the nature of American law which will always prevent Bar examinations from being good unless keyed to some particular course of study or instruction; and then quotes the following: "Law has not the demonstrative certainty of mathematics; nor does one's knowledge of it admit as many simple and easy tests, as in the case of a dead or foreign language; nor does it acknowledge truth as its ultimate test and standard, like natural science; nor is our law embodied in

schools are giving a number of optional courses.[76] If they are permitted to do so, certain schools may eventually concentrate upon portions of the law, following the lead of the Inns of Court, which, prior to the advent of printed texts and professional common law instruction, gave specialized training in advocacy and allied fields of law by "moots" and readings.[77] Perhaps we can profitably study the method of instruction in engineering. While the basic courses are much the same, yet for years separate departments have given specialized instruction in electrical, civil, mechanical, sanitary and other fields of engineering. We have not considered it necessary to restrict our general cultural course leading to the study of law, with the result that a student usually *elects* a major and a minor in college. If that is permissible, why should we not permit him to place greater emphasis upon one or more fields of law?

In the second place, as we have noted, there is likely to be a certain lag between the standards of training necessary for efficiency and those actually in force at a given time and place. We should continue to raise standards, but, because of this lag, candidates should be required to go through a further sifting process under actual conditions of practice. Only in this way can their ability, character and fitness be finally determined. This is somewhat true also of more highly trained candidates, particularly as few have had an opportunity to obtain practical experience. To supply this "missing element in legal education," it has been suggested that we adopt the far reaching proposal, already being tried out in modified form in this country, of a probationary period of practice.[78] It is an adaptation to our needs of the British requirement of service as an articled clerk before becoming a solicitor, and takes cognizance of the old world theory, which is hard to down even here, that practical experience is an essential part of the training to be a lawyer.[79] If this suggestion is adopted, at the end of the period, say five years, those who have failed to practice will be dropped from the roll, and others who have demonstrated a substantial lack of ability, character and fitness will be eliminated. Aside from any tangible benefits which may accrue from the adoption of this proposal, it will have an inestimable *in terrorem* value during the formative period of practice.

Perhaps, by permitting the forces now moulding the profession to play more freely upon it in this manner, distinct divisions in many fields may ultimately appear, by the process of natural evolution, as they have already done, notably in patent law, and in other fields to some extent. Until they have more fully emerged, any prophecy as to whether they are to be recognized by legislative fiat, by rule of court, or by selective groupings in bar associations will necessarily be largely sibylline in character.

However, entirely apart from any question of division, these two proposals should be adopted—the first out of fairness to the candidates and the law schools which are seeking to meet the public demand for expert services, and the second for the better protection of the public. Therefore, the entire profession, including those who favor and those who fear this possibility, may unite in support of these suggestions, with the assurance that the survivors of the probationary period, whatever their method of entrance, will constitute a more perfect basis for a truly professional Bar, and will be progressively better equipped to perform their special function in the social order.

a written text, which is to be studied and expounded, as is the case with the Roman law and with some foreign systems.

"Finally, our law has not any long established and generally recognized traditions, which will indicate to the examiner what his examination ought to be, and to the student what it will be; and the whole field of law is so extensive, and so much of it is unfit for the purpose of systematic study and instruction, that one who attempts to cultivate the whole of it indiscriminately will not cultivate any of it to much purpose."

He then concludes that the examiner who examines without reference to any particular course of study "can have no other standard than the state of his own knowledge; and the success of the person examined may therefore depend less upon what they know than upon what the examiner knows."

76. Reed, "Present Day Law Schools," Carnegie Foundation (1928), Chapters XII and XV. At p. 227 he says: "A burden that has become too great for any school to carry in its entirety must be distributed among the schools. Abandoning the ambition of preparing general practitioners of the law, two or more different types of law schools would better each concentrate upon a portion of the field. The graduates of each type could then be more adequately prepared for the limited responsibilities that would be theirs. Considered simply as an abstract proposition this would produce much more satisfactory results than those that flow from the present system. On the one hand, graduates of any and every law school would no longer regard themselves as fully qualified to render any kind of legal service when as a matter of fact they are not. On the other hand, lawyers who gravitate into narrow specialties would not waste so much of their preparatory time upon relatively unrelated branches of legal activity.

"In the judgment of the writer, not only will the law schools be eventually compelled to adopt this method of extricating themselves from their difficulties, but already forces are at work that are destined to split, first the schools, and then the legal profession into which they feed their graduates"; also see "Annual Review of Legal Education," Carnegie Foundation (1934), 50-51.

77. Carr-Saunders and Wilson, "The Professions," 32 *et seq.*

78. Reed, "The Missing Element in Legal Education," reprinted from "Annual Review of Legal Education," Carnegie Foundation (1929). The Board of Bar Examiners of New Mexico has recently established a probationary period of one year after passing the Bar Examination. (See Rule 3, Sec. 8 of the State Board of Bar Examiners). See Comment in "Annual Review of Legal Education" of the Carnegie Foundation (1934), 35. The Joint Conference on Legal Education in New York on January 11, 1935, adopted a five-year probationary period. This is subject to the approval of the member organizations of the Joint Conference, which has still to be obtained at the time this is being written.

79. Symposium on "What Constitutes a Good Legal Education," Pound, Frank and A. T. Vanderbilt, Am. L. S. R. 7: 887-909 (Dec., 1933). These papers were read before the Section of Legal Education of the American Bar Association at Grand Rapids, August 29, 1933. See also, Reed, "The Missing Element in Legal Education," Annual Review of Legal Education, Carnegie Foundation (1929).

Young California Lawyers Join A. B. A.

"We decided this spring that California, the originator of the Junior Bar idea—under Hubert T. Morrow's direction in 1928—should take a leading part in the development of the national conference. To do this it was necessary first to have our young attorneys become members of the American Bar Association. It was announced in the April issue of The Bulletin that our immediate objective was the securing of three hundred new members eligible for the Junior Bar Conference of the Association. We accomplished that objective. Since February, more than three hundred new members eligible for the conference have been enrolled in the American Bar Association from the State of California. The successful campaign of Chairman W. I. Gilbert, Jr., and his committee for Los Angeles County deserves our hearty commendation. It is believed that this committee, with the assistance of the executive committee of the 'Junior Barristers,' have set a record."—*Lowell Mathay in Los Angeles Bar Association Bulletin.*

NATIONAL BAR PROGRAM ADDRESSES ON THE CRIMINAL LAW AND ITS ENFORCEMENT

A State Department of Justice . . .

. . BY EARL WARREN
District Attorney, Alameda Co., California

IN any discussion of our crime problem we can always agree upon one thing: namely, that we have altogether too much crime in America, but the point at which we fall into disagreement is when we endeavor to appraise the factors which contribute to that result and when we venture to suggest a specific remedy for our present sad condition. It is not surprising that we should so disagree since we do not reason from the same premises. If we are to be frank, we must all admit that no one knows and understands the American crime problem as a whole. We are, of course, indebted to many students of the administration of criminal justice for the enlightened opinions which they have given us but, at best, their conclusions have been based upon partial information and at times faulty information because the statistical material available to us is sketchy, inaccurate and in no respect uniform. It follows that the conclusions of even the most eminent students in this field are largely personal opinions based upon personal experience and the hearsay experiences of others, the accuracy of which have never been subjected to the acid test. We have blamed everything, from prohibition to parole and everybody from police and prosecutors to the body politic, for our unhappy situation, but we do very little about it principally because we cannot agree upon a solution and because most people refuse to accept any improvement unless it promises perfection—a result impossible of attainment. We are inclined to disregard our history and to conclude that our crime problem is entirely a modern phenomenon for which there should be an equally modern and immediate solution. In this regard it should be remembered that for a myriad of reasons we always have had and probably always will have a serious law enforcement problem in this country. Exactly thirty years ago the late Chief Justice Taft issued the following warning to the American people:

"I grieve for my country to say that the administration of criminal law in all the states of the union is a disgrace to our civilization. We are now reaching the age when we cannot plead youth, sparse civilization or newness of country, as a cause for laxity in the enforcement of law."

This should be sufficient proof that we have been suffering from a creeping sickness, the origins of which are to be found in the dim past as well as in the immediate present.

Many people are inclined to the belief that it is due almost entirely to a decadence of the public service as a result of the corruption of public officials. Odious comparisons are made with crime conditions in European countries, but most of our commentators fail to note, not only the entirely different conditions that prevail in those countries, but also that European countries have had their scandals in law enforcement work. No police scandal in this country in recent years has reached into such high quarters as the recent Stavisky scandal in France, and even the famed Scotland Yard has had its scandals which have shocked the nation. In his book, "Scotland Yard," Mr. George Dilnot, the friendly critic of the London police, says:

"The blackest page in the history of Scotland Yard was written in the late seventies. For stark melodrama and wild incredible happenings, it might have been the fantastic imagining of a professional novelist. For in 1887 it was discovered that the highest and most trusted detectives of Scotland Yard were the paid tools of one of the most astute and unscrupulous of rogues that ever infested the earth."

Human nature is very much the same the world over. While we have had altogether too much graft and corruption in law enforcement circles throughout this country, I do not believe that the officials of foreign countries have a corner on common honesty, but that, on the contrary, there is to be found in America just as much integrity and seriousness of purpose on the part of law enforcement officers as is to be found in any European country. It stands to reason that it would be more easy to enforce the law in a country the size of Great Britain, which is only a little more than half the size of the State of California, or in Italy, which is approximately two-thirds its size, or in France, which is less than a third larger. I wager that if this country were no larger than California, and that if it had both natural and political boundaries as impassable as those of European nations, many of our major crime problems would fall of their own weight. If the population of this country were 98 per cent native born, as in London, or 92 per cent in Paris, instead of 66 per cent, as in New York or 70 per cent in Chicago, our law enforcement task would be much easier. If families lived not only in the same city, but in the same house for generations, instead of migrating like gypsies from one side of the continent to the other, most of our major unsolved crimes could also be cleared up in a short period of time. If we had as many police officers in some of our cities as they have in some of the European cities, we could materially improve our crime conditions. For example, Scotland Yard, the Police

Department of metropolitan London, which has an area of only 693 square miles, and is about one-sixth the size of the County of Los Angeles, has a police force of 20,000 men. In contrast with conditions in European countries, we have an area of three million square miles, and a population of one hundred and twenty-two million people, including fourteen million foreigners, a large percentage of whom are unfamiliar with our governmental institutions and unsympathetic with our attempts at law enforcement. We have forty-eight sovereign states, each with the American concept of government, premised upon the right of local self-government, which in turn includes the right of local enforcement. In this country, for the criminal, there are no boundaries, either natural or artificial, from the Atlantic to the Pacific and from the Canadian to the Mexican border, because our residents, foreign and native born, good and bad alike, with 24 million automobiles at their disposal, are encouraged to use our broad highways from one end of the land to the other without credentials and without any limitations whatsoever.

These and other factors have a direct and real bearing on law enforcement. The fact is—and it must be apparent to any one who has given serious thought to the subject—that while many of the failures of our system of criminal justice may be justly ascribed to the frailties of human nature as manifested, still there are certain physical, economic and racial characteristics of our country which contribute largely to the unhappy situation in which we find ourselves. In addition to this, we have not kept pace with modern criminals who have taken advantage of ever changing conditions to develop new and larger fields for exploitation. Little change has been made in our institutions or our methods of enforcing the law during the century and a half of our existence. In the main our institutions are much the same as they were before we had highways, fast transportation, high powered repeating weapons, vast areas and densely populated communities. We have at the present time about 40,000 police agencies and several thousand prosecuting agencies, most of which are administering the criminal laws of their respective states purely as local problems and with but little official connection with the activities of other similar agencies. Unlike the criminals, these agencies have very definite boundaries, artificial, but none the less effective to circumscribe them in their law enforcement activities. Most of them, by far, desire to do a good job and, if given a fair opportunity, would do a better one than is being done at the present time. They are giving serious thought to the problem, in fact, more serious consideration than any other group of our citizens, and in many ways are bringing about through unofficial organizations a measure of cooperation which is not provided for or even contemplated under the law. They realize that conditions cannot be permitted to continue as at present and that, if we are to succeed, there must be an integration of all our law enforcement activities—not only police with police and prosecutor with prosecutor, but police with prosecutor, judges, prison boards and the public.

It would be impossible for anyone by analysis to determine what proportion of our failure is to be attributed to the inherent weaknesses of our police system, to the weaknesses of our prosecuting agencies, or of the judiciary, considering each independently. Neither can we say what percentage of that failure can be attributed to the lack of coordination between them, but we all realize that there should be a dovetailing of enforcement activities, and that, if any real progress is to be made, all of these agencies must be brought into direct focus upon the crime problem.

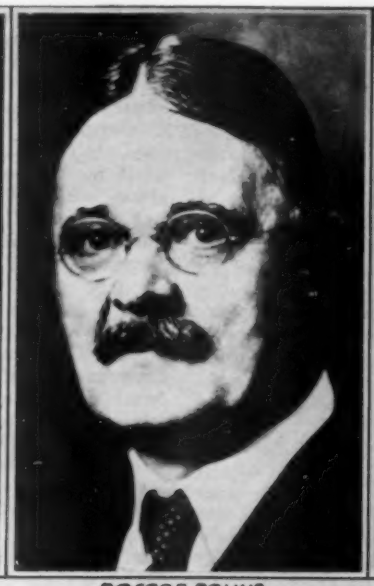
At the present time we are standing at the cross roads of several lines of thought. One would centralize all the law enforcement activities in the Federal Government at Washington, D. C. Another would centralize all such activities in the forty-eight state capitols. A third would leave the duty of law enforcement entirely in the hands of the local units, as it is today, merely strengthening those units to meet the exigencies of the situation. A fourth would leave the primary duty of law enforcement in the hands of local officials, but would supervise and control their activities in all matters of more than local importance, as the various states of the Union now control the major highways of the state, leaving the by-ways of peculiarly local importance to be regulated by those whose rights are directly affected thereby.

In determining which, if any, of these lines of thought we are to follow, it is well to remember that we are not dealing simply with a police problem, or a prosecution, or a judicial problem. We are dealing with the whole broad problem of law enforcement, with all its implications. This problem involves the fundamental rights of our people —it is the greatest challenge to, and should be the greatest object of, government.

The first theory, that of complete nationalization of law enforcement activities, can, and I believe should be dismissed with the statement that it is not the American way of doing things. It is not the American concept of government. The second, providing for complete state centralization, differs from the first only in degree, and it is difficult to believe that the American people will surrender to their state capitols this most important function of local government. The people of the United States are now witnessing with a feeling akin to horror, the spectacle of one of our states engaging in a program of centralization unlike anything that has ever grown on American soil, and I apprehend that, before the experiment is completed, we shall have for permanent use a horrible example of the dangers of centralized state government, which will make the weaknesses of local decentralized government fade into insignificance by comparison.

The third theory, which might be called the "let bad enough alone policy," seems to be impossible because we have proved that, under present conditions, we cannot keep pace with the modern criminal. Already we have sent up a signal of distress, and if it had not been for the timely interest shown by Congress in the crime situation, and had it not been for the courageous and efficient work performed by the United States Department of Justice, no home in this country would now be safe from the aggressions of the kidnaper. The backbone of that most despicable form of organized crime has been broken by the Federal Government, and the kidnapers will be looking for other fields to conquer. What form their crime will take, no one knows, but we do know that they will not become

JUSTIN MILLER. U&U Photo



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model citizens merely because the Federal Government broke up their racket. We know that they will be found in criminal pursuits wherever they can do so profitably, and we cannot expect the Federal Government to assume the permanent responsibility of policing the country against them. That responsibility remains as it always has been—the responsibility of the states and their subordinate units.

We now come to the fourth line of thought which proposes to coordinate law enforcement activities by supervising and, to a limited extent, controlling the local agencies which carry on the work. In recent years there have been two lines of development, one of which finds expression through a state police, and the second, through a state department of justice. They are not necessarily incompatible, but, up to the present time, the two lines of thought have apparently not gone hand in hand in any of the states. The state police idea tends more toward centralization, but in no state where such a body is in existence have the local agencies been abolished. It therefore also partakes largely of the nature of a coordinating agency. Twelve states have adopted the plan and several others are now giving consideration to it. It should be remembered, however, that this is only a partial attack upon the crime problem, and, carried to its logical conclusion, it concerns itself with only one phase of law enforcement.

As its name implies, it deals solely with the police problem, and only with a relatively small portion of that problem. The activities of the various state police are limited to the rural or unincorporated areas which usually, in any state, produce only a small percentage of the real crime problems. It is in the great metropolitan areas that crime breeds and festers and any remedy, to be at all adequate, must reach into such places. It seems to me that the state department of justice idea is better designed to accomplish that result than any other thought that has yet been developed. True, we have had no satisfactory experience to prove the assertion of such a statement, but it does appeal more forcibly to one's sense of proportion and logic than any of the other suggestions that have yet been made, in that it can be developed to cover the entire field of law enforcement and, in doing so, need not violate the American concept of government so far as local self-government is concerned.

The office of Attorney General, which should head up the State Department of Justice, has come down to us from earliest colonial times and its roots are to be found in the common law of England. Although in a few jurisdictions the office has only such powers as are expressly conferred upon it by law, it is generally held throughout the country that the Attorney General has all the common law powers and duties pertaining to that office except in so far as they have been limited by statute. He is, therefore, by tradition, as is his forebear the Attorney General of England, the Chief Law Officer of the State. It is true that in the past the activities of our state Attorneys General have been largely of a civil nature, but that is because of our treatment of the office, rather than because of any inherent

weakness in it so far as criminal jurisdiction is concerned. In the process of completely decentralizing our law enforcement agencies, which commenced early in the 18th century, the activities of the Attorney General were materially curbed by the creation of the office of County Attorney, or District Attorney, and by the placing of full primary responsibility for the prosecution of criminal cases upon such officers. In the State of Connecticut, as early as 1704, we find the following statute:

"Henceforth there shall be in every countie a sober, discreet and religious person appointed by the countie courts to be attorney for the Queen (this was in the reign of Queen Anne) to prosecute and implead in the laws all criminals and to doe all other things necessary or convenient as an attorney to suppress vice and immoralitie.—And the said attorney's charges and encouragement to be allowed out of the treasury of the Countie."

Here we see the first "district attorney" in America and the beginning of the system of locally autonomous prosecuting attorneys which has since spread throughout the country. As the power and prestige of the local prosecutor has increased in the field of law enforcement, the position of the Attorney General in such matters has naturally become correspondingly and relatively less important. We have allowed the office to degenerate until in many states it has become a part time office and the Attorney General is expected to supplement his salary through private practice. Almost without exception, he is paid less than other important officers. In the great State of New York, where the Attorney General is said to have the largest law office in the world, he receives a salary equal only to the Magistrates of New York City, and but half that received by the County Judges of that City. In the State of California until recently, the District Attorneys of our larger counties have received substantially larger salaries than the Attorney General. In the State of Michigan he receives but $5,000 a year, which is the highest salary paid by the other states that provide for his general supervision over criminal prosecutions. The salaries in other states range downward until we find in one instance he receives the munificent sum of $1,000 per annum. Under such circumstances no public official can reasonably be expected to look for greater responsibilities or added duties. On the other hand, if the Attorney General should be compensated as other important public officials are paid, and if he should be given definite duties to perform and an adequate staff to function with, he could be expected to perform those duties with as much vigor as could be expected from any other important public official. There is no reason why he could not combine with his present civil activities the additional duties of actively supervising and coordinating the law enforcement activities of local officials.

At the last convention of this Association, the following resolution was adopted:

> The American Bar Association recommends the creation in each state of a State Department of Justice, headed by the attorney general or by such officers as may be desirable, whose duty it would be to direct and supervise actively the work of every district attorney, sheriff and law enforcement agency, and who would be specifically charged with the responsibility therefor. This Department would include a central criminal bureau equipped with records and with investigators similar in character and qualifications to those now attached to the Federal Department of Justice."

At the time this action was taken, eleven states had already given to the Attorney General supervisory powers over prosecuting attorneys, but those powers had been seldom used and, in the broadest sense, there was no state department of justice in existence. In 1921 the State of Louisiana had created such a department, but it was one in name only as it merely followed the legislation of the other states which give supervisory powers to the attorney general. The State of Iowa had also denominated its Attorney General and his assistants as a Department of Justice, but his powers were extremely general in nature and were seldom exercised. In 1934 these powers were broadened so as to give him the authority to establish a State Bureau of Criminal Identification and to set up a radio broadcasting station for the police officers of the State. To what extent the Attorney General had functioned under this section, I am not informed, but the legislation is undoubtedly a forward step and should be of assistance in coordinating the activities of the law enforcement officers of that state. During the present year, 10 state legislatures have considered the plan and to date at least four of them have passed legislation to that end.

If a state department of justice is to accomplish the desired results, the Attorney General must be given definite responsibilities and definite powers in connection with the whole field of law enforcement. So far as I am informed, the only State in the Union that has undertaken to accomplish this result is the state of California.

At the last general election, the people of this state amended the Constitution so as to provide that the Attorney General shall be the chief law officer of the State, and that it shall be his specific duty to see that the laws are uniformly and adequately enforced in every county of the State. To that end he was given direct supervision over all district attorneys and sheriffs, and over such other law enforcement officers as may be prescribed by law. It is made his duty whenever the law breaks down in any county, to assume the functions of the District Attorney and to prosecute the cases necessary to establish law and order in that community. At its recent session the Legislature approved bills naming the Attorney General Chairman of the Board of Managers of the State Bureau of Criminal Identification and Investigation, which has been in existence for many years and to which every sheriff and chief of police is required by law to furnish daily, the fingerprints of all criminals arrested and also a report of felonies committed. At the present time, the fingerprints of 400,000 persons are on file and classified in that Bureau. Attached to the Bureau are to be 12 investigators who may be assigned to duties by the Attorney General, and when needed to assist the various counties upon request of the District Attorney, the Sheriff, or any chief of police. The Legislature also authorized the Attorney General to remove any District Attorneys or Sheriffs from criminal cases and to appoint suitable persons to perform their functions whenever in his opinion the public interest requires such action. He was given the right to command and use the county grand jury at his pleasure and was furnished with ten secret service investigators to keep him informed on crime conditions throughout the State. At this date the bills are still awaiting the approval of the Governor, but the fact that they were spon-

sored by the State Bar, the State Peace Officers and District Attorney's Associations, as well as other civic organizations encourages us to believe that they will, in due course, receive the necessary executive approval. The fact that the law enforcement officers of the State have assumed a position of leadership in this movement is not only an indication of their desire to coordinate their activities but is also a guaranty that progress will be made under the new system.

The people of California have struck at the heart of their crime problem by giving a state constitutional officer the machinery for acquainting himself with that problem as a whole and by placing the definite responsibility upon him to see that the laws are adequately enforced in all parts of the State. To predict the results of this important governmental experiment would be impossible and the time allotted for this paper will not permit elaboration upon our expectations. To claim that it will entirely solve the problem would be ridiculous but to expect substantial improvement is not unreasonable. It will not revolutionize law enforcement methods, neither will it change our theory of local responsibility and of local self government, but properly administered, it should have a direct tendency to bring order out of chaos, and to assist local authorities in coordinating their activities in all criminal matters of more than local importance.

If it does no more than to furnish a sympathetic contact with the Federal Department of Justice and with the other states of the Union in their efforts to suppress organized crime—if it merely has a tendency to bring about more uniform police and prosecution methods—if it can iron out even some of the misunderstandings that inevitably develop between law enforcement agencies in the heat of battle—if it has a tendency to relieve the local authorities from some of the demoralizing local political influences which continually harrass them—if it simply upholds the hands of the authorities when they are right and accurately informs the public when they are wrong—in short if it becomes only a moral and educational factor, as distinguished from an administrative factor, in law enforcement matters, the experiment will have been justified, progress will have been made, and the American Bar Association may be proud of its action in urging it upon the states of the Union.

Toward a Better Criminal Law . . . . .

. . BY ROSCOE POUND

Dean of Harvard Law School

AS one studies American criminal justice in action, it is evident that the four chief factors, personnel, administration, procedure, and substantive law, must be ranked in that order in measuring their influence upon the results. With certain qualifications with respect to particular jurisdictions and taking the country as a whole, better mode of choice and tenure of judges, prosecutors and enforcement officers, better organization of courts, better administrative methods and more adequate administrative personnel must come first in any effective program of improvement. But the judges, courts, prosecutors, enforcement officers and administrative officials will be guided by the authoritatively prescribed criminal procedure and will be giving effect to the authoritative criminal law. An archaic procedure and patchwork criminal law, as all experience shows, will give better results, if well administered, than the most modern procedure and well reasoned up-to-date substantive criminal law, if ill administered. Nevertheless, a satisfactory administration of criminal justice must rest ultimately upon a satisfactory criminal law. Our ultimate program of improvement must embrace reform as to personnel, as to administration, as to procedure, and as to the substantive law.

In the United States, however much we succeed in improving the administrative features of criminal justice, it will still be justice according to law. Our constitutional regime requires that no one be deprived of life, liberty or property without due process of law. Although there is at the moment much restiveness under constitutional limitations and decrying of the bill of rights, I suspect that the conditions of tomorrow will call for these limitations even more imperatively than those of yesterday. The rise of administrative tribunals and agencies of every sort, the pressure to get things done in a hurry which goes along with the conquest of external nature and harnessing natural powers to man's use in an age of mechanical progress, and the overshadowing of the individual and society which it is the task of constitutions to achieve and maintain. The more difficult it becomes to maintain this balance, the more orderly government will call for bills of rights and the more these bills of rights must be regarded as law, not as pious exhortation, and must form the basis of a constitutional law.

Our civilization rests upon law. The quest for an administrative Utopia, in which all wise supermagistrates will preserve order and maintain the social and economic structure by a summary punitive justice, after the fashion of the military, without technicalities of procedure and without authoritative substantive limitations upon their action, is as idle under any organization of society we can foresee in America as the quest for an economic Utopia in which the material wants of everyone will be equally satisfied. Undoubtedly the circumstances of modern life call for an individualization of punitive justice and a further development of preventive justice which are to be had only through a better development of the administrative side. But the substantive criminal law as we have it will have to be adjusted to the development of an administrative side of punitive justice and the administrative element must rest upon and have its limits defined by law in order

to be tolerable. Already there have been examples of what a zealous and well meaning but bigoted magistrate sitting in a Juvenile Court and clothed with wide powers over the relation of parent and child, can do to stir the deepest religious feelings of a strong element of the population with whose views he does not agree. Both criminal procedure and substantive criminal law are doubly called for when such things are possible.

I assume, then, that an overhauling of the substantive criminal law must be a large part of any far-reaching program of improvement of punitive justice seeking enduring results. But if the results are to be enduring, the overhauling must be intelligent, thorough-going and consistent. Patchwork tinkering of criminal codes at every session of the Legislature has long been the bane of criminal law. Long and critical preparation must go before the overhauling.

How shall this preparation be achieved? As I see it, there are three agencies to which we must look: the law schools, institutes for research, and ministries of justice or their analogues. The last two of these are in the future, and the first, already well established, have yet to turn their energies effectively toward a better criminal law.

Before considering what American law schools may do and ought to do, with the facilities already at hand, and with the methods of which our law teachers are already masters, to improve American criminal law, let us see what our law schools have done and what they have left undone in this field.

No doubt it would be agreed that the creative output of American law schools begins with the writings of Joseph Story. As the fruits of his law school teaching he wrote epoch-making treatises on equity, on constitutional law, on the more important topics of commercial law, and on the conflict of laws. Next came Greenleaf setting forth the fruits of his teaching in an epoch-making treatise on evidence, the foundation of what has since been written on that subject in the English speaking world. Parsons followed with a book of great influence on the law of contracts, written from the chair held by Story. Then came Washburn, again a law school teacher, with a book that did much to fix the American law of real property. Thus, by the time of the Civil War, contracts, commercial law, conflict of laws, constitutional law, equity, evidence, and real property had been given stable direction by creative treatises proceeding from law schools and embodying the results of law teaching. These treatises were used by practitioners and by judges as semi-authoritative repositories of the law. Indeed, they acquired such standing that a practitioner is said to have inquired indignantly of a high appellate court whether there was a statute giving them authority. As late as 1873, Bigelow's Overruled Cases regularly cites judicial overruling of these texts as on a par with overruling of decisions. What was more, they were the basis of instruction in our law schools until 1870 and very largely to 1890 or even 1900, and were regularly read at least until the present century by those who studied for the bar in the offices of practitioners. One cannot easily exaggerate the influence of these books in the shaping of private law in the United States. Moreover, the development thus began has gone forward in our law schools ever since. Law schools have been and they are a factor of the first moment in the growth of the law in these subjects, which Story and his pupils and his successors and his imitators made their own. Public law, private law, conflict of laws, and international law all bear the mark of the American teacher of law. He has provided each of them with systematic organization, internal consistency, and a body of principles as authoritative premises for legal reason and basis for judicial and juristic development. But it is depressing to compare with this record of achievement what our law schools have done, or rather what they have not done, in the field of criminal law.

No complete treatises on criminal law have come from our law schools to put alongside the splendid list of books on the substantive private law which begins with Story on Bailments and ends for the time being with Williston on Contracts, or the no less splendid list of writings on procedure that begins with Greenleaf on Evidence and ends with the monumental creative treatise of Wigmore, or the striking out of new paths in Story on the Conflict of Laws culminating in the no less notable creative treatise of Beale. Our standard work on criminal law in the United States is still Bishop. Indeed, Bishop's is still the only original, and in some degree creative, complete treatise which we have on the subject. Certainly it is the only American book which has conspicuously influenced our criminal law. It is now in its ninth edition (1923.) But the eighth edition (1892) is the last original edition and the work still speaks essentially from the date of its first edition (1856.) Moreover, Bishop's Statutory Crimes (1873, 3 ed. 1901), a necessary supplement, and still the best we have, speaks from the nineteenth century on what is emphatically and characteristically a subject of the twentieth. Bishop's books did not come from a law school Hence good as they are, and for their time they are very good, they show many signs of never having been subjected to the critical scrutiny of doctrinal points and of the inter-relations of rules and principles by which students so often compel their teachers to write better than they know.

An older book than Bishop's is Wharton (1846, 10 ed. 1896.) It is a typical practitioner's book, a key to the decisions, with a text founded on the English texts of Chitty, Archibald, and Russell. It has not been without influence, not always for the best, on some particular points, foreclosing critical investigation by presenting the doctrine of some case as a universal general proposition.

Our only other complete treatise of consequence is McClain (1897). This is a conventional statement of American criminal law as it came to be in the formative period of our legal institutions. It is in no sense a creative book, nor has it noticeably affected the development of the law. It bears no mark of a law school and might as well have come from a practitioner. It comes from what was under the author's guidance a school of the apprentice type and palpably proceeds from a practitioner who had turned teacher without ceasing to be in method and spirit a practitioner.

So far as treatises go, the contribution of our law schools to American criminal law has been in

substance nil. Even for students' introductions we have had to look outside the schools. Apart from American editions of English texts, for a long time our most serviceable book was May's (1861), written by a judge. Miller's handbook (1934) is but a new edition of a typical hornbook written by a well known hack writer.

Thus the criminal law is substantially the only important branch of American law which has not been affected powerfully and affected for the better by some creative text book written by a great teacher of law and embodying the results of his teaching and of his study in preparation for teaching. Need we wonder that while notable strides have been made in other departments of law in the last generation, the criminal law has been relatively stagnant? It is humiliating to have to acknowledge that our law schools have neglected a conspicuous duty in this connection.

While no creative text on criminal law has come directly or indirectly from the law schools, let us note what the schools have been doing for other fields of the law. Following on alphabetical order, let us think of Story and Mechem on agency, of Story and Parsons and Brannan on bills and notes, of Parsons and Page and Williston on contracts, of Story and Beale on the conflict of laws, of Story and Cooley on constitutional law, of Story and Pomeroy on equity, of Greenleaf and Thayer and Wigmore and Jones on evidence, of Story's Foundation for the law of public utilities in his work on bailments and of Wyman on Public Service Companies, of Keener on quasi contracts, of Washburn and Gray and Kales on real property, of Williston on sales and of Cooley and Wigmore's masterly summary and Bohlen's enlightening essays on torts. Nor have our law schools failed to provide adequate students' introductions in other fields than criminal law. To take them in alphabetical order, think of Huffant on agency, Bigelow on bills and notes, Dobie on bailments and carriers, Minor and Goodrich on conflict of laws, Cooley's elementary book on constitutional law, Corbin's Anson and Williston's Wald's Pollock on Contracts, Vance on insurance, Burdick and Gilmore and Mechem on partnership, Woodward on quasi contracts, Vold on sales, Arant on suretyship and guaranty, Bigelow and Burdick on torts, and Bogert on Trusts. There is hardly a subject of consequence in American private law on which the student will not find at least one scholarly introductory book in which some notable law teacher has employed his study, learning, and experience to provide a scientific guide. Criminal law alone has been neglected.

Much of the best work that our law schools have done for American law has been done since 1870 through the systematizing influence on doctrinal development exercised by well made case books. This influence has been increasingly marked in recent years through the tendency of judges to consult and rely upon articles and notes in our academic legal periodicals in which the doctrinal ideas of law teachers teaching from or trained by these case books are set forth. Thus no student of equity can have failed to notice the posthumous influence of Ames's Cases on Equity, exerted chiefly in this indirect way, in bringing back the older and better idea of principles governing the exercise of Chancellor's jurisdiction in place of the idea of rigid rules defining that jurisdiction which grew up in the texts used by practitioners in the nineteenth century. Criminal law has had relatively little help of this sort. Note how the account stands. There are no less than fifteen current case books on civil procedure and pleading proceeding from law schools. There are ten such case books on the law of property. There are eight on torts. There are seven on corporations. There are six each on equity, public utilities, and suretyship. There are five each upon agency, bankruptcy, bills and notes, contracts, insurance and partnership. Today, there are four on the substantive criminal law, and that subject now ranks in this respect with domestic relations, evidence, mortgages and trusts. But this is not the whole story. In the last few years there has been some aroused interest in criminal law which has added two to the list of case books. Until then there were but two, so that criminal law stood in this respect behind carriers, conflict of laws, damages, international law, taxation and wills, with three each, and along with administrative law, admiralty, labor law, quasi contracts, and sales. Judged by this measure, criminal law has received less than a third the attention which law teachers have given to civil procedure (a subject of which the less the better), two-fifths of the attention given to property, half of the attention given to torts, and about half of that given to corporations. It has received much less attention than equity, public utilities, and suretyship (each a third more), or than agency, bankruptcy, bills and notes, contracts, insurance and a partnership. If we note that quasi contracts occupy an important place in some recent books on other subjects, that somewhat neglected field of private law has fared at least as well as the criminal law.

But in truth the foregoing figures are far from revealing the full extent of the neglect of criminal law in American law schools. For in most of the fields in which so many well ordered, carefully systematized case books have proceeded from our law schools, there lay behind those case books built upon and carried further, the work of law teachers in text books which had done great things for American law in its formative era. In criminal law no such preliminary work had gone on in our law schools, and the scanty superstructure rests upon its own foundation.

We may tell the same story in another way. The first case book to come from our law schools was one on contracts (1871.) Next came sales (1872) and torts (1874). But the first case book on criminal law—unless we count the scanty temporary and illustrative collection of Chaplin (1891, published 1892)—was Beale's (1894, 5 ed. 1915.) Next came Mikell (1903, new edition 1925), and Mikell's shorter collection of 1908. Thus in fifty years after the first case book, six case books had appeared on contracts of which four are still current whiile but two had appeared on criminal law. Indeed, when we compare the two case books on criminal law in two generations from 1870 to 1930 with the output of case books on any other branch of the law during the same period, the comparison is eloquent of our academic neglect of the criminal law. It is not wholly from the nature of the sub-

ject and professional fear of subjecting life and liberty to arbitrary magisterial action that rule of thumb thinking and queer historical categories and non-rational doctrines and arbitrary exceptions and scholastic twists of argument persist in the substantive criminal law after the analytical and systematic work of law teachers has cleared such things away almost everywhere else.

When we turn to the directory of law teachers we read a like tale. Going no further in the alphabetical list of subjects than down to and including criminal law, we find listed one hundred and forty-seven teachers of civil procedure, common law pleading, and code pleading, and ninety-six teachers of contracts as compared with eighty-seven teachers of criminal law and procedure combined as one subject. Of the two authors of the case books longest used and of most influence, Professor Beale has long turned wholly to conflict of laws and Professor Mikell, who was for fourteen years occupied with the administrative work of the dean of a great law school, puts sales alongside of criminal law as his special subject. The other veteran teacher and scholar in criminal law, Professor Keedy, puts agency and bills and notes as his subjects along with criminal procedure. Some younger teachers of the subject have been coming forward and giving promise of real achievement. But one of them has already deserted law teaching, and when I see what has happened to their elders, I tremble as I ask how long it will be before many of them will be drawn off into subjects of commercial or business law or public law or administrative activities where the students are more numerous and the general interest of the profession is stronger or the rewards are greater. I say this with some feeling because for a generation I have sought to interest some young teachers in this subject so that they would take criminal law for their permanent major interest. Unhappily, the one of whom I had most hope has given up the law and I doubt whether more than two or three of those whom I have sought to turn in this direction have stayed turned. I fear we have yet to find and yet to develop the great legal scholar who will devote his life to the criminal law and do for that subject what only a great scholar and great teacher can do. But I put it to you whether any one thing which law schools may do is likely to be so fruitful for the improvement of criminal justice in America as the finding and developing of this scholar and teacher. I put it to you whether it is not a duty to the public to make possible the development of this scholar and teacher and to make straight his paths.

It is not enough to teach the criminal law as an elementary subject to first-year students, ordering its materials sufficiently for the purpose of teaching an elementary course, studying them sufficiently to present them to a first-year class, and thinking along with the subject so far as necessary to keep abreast of current decisions. It is not in this way that our law schools have done notable things for the advancement of the law. Yet in criminal law they have done little more than this and I fear they are doing little more than this at present. What is needed is that some scholars, or better some group of scholars, think ahead of the subject, uncover its problem before they arise in the courts, perceive the relation of its problems to the history of the criminal law and to the ends of criminal justice as it is understood today, study the adaptation of our inherited and acquired legal materials to those problems, and thus give intelligent direction to doctrinal development and adjudication and legislation. I would not for a moment decry the work that has begun to go on in laboratories and institutes in connection with law schools for scientific study and research in criminal investigation, in penal treatment and in penal administration. But the law schools as they are can best do the less showy work of doctrinal overhauling of the substantive criminal law.

How does it come that this one subject has been so neglected by American law schools? Certainly it cannot be because of any want of importance of the subject. Its importance in the general scheme of social control through the law is obviously much greater than that of suretyship or agency or bankruptcy or partnership, which have fared as well or better in the attention given them and far better in the quality and quantity of scholarly effort devoted to them.

In their neglect of the criminal law, our law schools but reflect the demands of students and the attitude of the legal profession. Students press for the subjects with which they expect to be concerned in their professional life. No ambitious young student in a national law school of today seeks to prepare himself to practice in criminal causes. He knows well that habitual appearance in such cases is the business of a type of politician lawyer of little standing at the bar or of the lower stratum of the profession. Hence he seeks no more than that minimum of knowledge of criminal law which is required by the examiners for admission to the bar. I am told that in the answers to a questionnaire as to proposed changes in the curriculum sent out recently by a faculty of law, a large proportion of the students gravely proposed that criminal law be left out of the list of required subjects. They said they did not intend to practice in criminal cases, so why require them to waste their time and energy on criminal law?

Obvious economic causes have turned the leaders of the profession more and more away from the trial courts and almost completely away from the work of the criminal courts. Nor is there reason to suppose that these causes will be less effective in the immediate future. Rather the specialization which turns our ablest lawyers into the work of client-caretaking is likely to increase and to go further. Anglo-American law teaching, in contrast with the academic law teaching of Continental Europe, is in origin an apprentice teaching. It is professional rather than academic. Hence it reflects faithfully the ideals of the profession. It is not much more than a century ago that Joseph Story took a long step forward in legal education by turning the apprentice teaching of law, under the eaves of a university, into a course of academic instruction carried on by lawyers with the methods of the old time college. It is no more than two generations since Langdell was bold enough to offer a law teaching position to a great legal scholar who had not practiced and never practiced. Much of the spirit of the old apprentice training still lingers about all our law schools. But a uni-

versity law school, and our better law schools are now all of that type, should take a larger and longer view. In spite of, indeed just because of, this attitude of the profession, are not law teachers, who, as one of their leaders of the last generation used to say, have taken monastic vows of poverty, chastity and obedience, the more called on to take up and develop this important but neglected subject? Do they not owe it to the law and to the public to rise to the opportunity which is before them? Ought they not to raise up great scholars in criminal law for the law's sake, for the sake of general security; one might say, for the sake of civilization?

Law teachers are called upon even more imperatively to do for criminal law what they have done in so many other fields of the law because as things are we cannot expect bench or bar to do the large scale creative work which they were able to do a century ago. The days are long past when Joseph Story could be justice of the Supreme Court of the United States, sitting with Marshall in many of the great cases which settled our constitutional policy, could sit at circuit and decide cases of the first import for international law and for admiralty, and could at the same time be Dane Professor of Law at Harvard and write a long succession of law treatises of decisive influence in the shaping of American law. With the crowded calendars of today, we cannot expect courts to take the lead. Nor can practitioners devote the time to elaborate development of arguments in every detail and in relation to the whole of law, as they could do when our law was formative. The economic conditions of practice forbid. No less do they forbid creative law writing by law writers making that work their vocation, without practicing and without a teacher's chair. Indeed, publishers could not be found for such works, if lawyers could write them. But we must bear in mind that the importance of criminal law to society is far beyond the importance it seems to have when looked at from the standpoint of economic advantage to the practitioner. It is our main reliance for the maintaining of social interests as such. Thus it is at the very foundation of the legal ordering of society. And this means no less than that it is at the very foundation of our civilization. When criminal law breaks down in action, cracks are sure to develop in the economic fabric with which the leaders of the profession are more immediately concerned. From the standpoint of things ultimate, as contrasted with things proximate, no part of the legal order is intrinsically more deserving of the best efforts of a scholar.

Moreover, the criminal law has a need of scientific treatment much greater than that of any other subject in the law. Roman law was relatively crude on its criminal side. The great work of the classical jurists was done on the civil side of the law. The enduring contributions of the Romans were in private law and in administration. Thus criminal law, as it were, started with a handicap in comparison with private law. But the subject is inherently more difficult than any of the branches of private law. The harmonizing or integrating of the demands of the general security with those of the individual life, which is the persistent problem of the criminal law, calls for the best of which lawmakers and judges and jurists are capable. We have to do with the most insistent of human desires and the most tender of human interests. From the beginning the pressure of those desires and the strong feelings involved in those interests have subjected criminal law to a pulling in divergent directions. In the history of criminal justice stress has been laid now on the exigencies of the general security and now on the interest in the individual life. The law has moved back and forth between excessive regard for the general security and excessive regard for the claims of the individual accused. Indeed, in its very origin there is a certain internal contradiction in the criminal law. For it began as a system of limitations and checks upon the agencies of social control in primitive society in which ethical custom, religious rites, public opinion, and the beginnings of what comes to be law are undifferentiated. In part the criminal law is a body of precepts defining and forbidding antisocial conduct. In part, on the other hand, it is a body of limitations upon magisterial enforcement of those precepts. The difficulties of its task of adjusting the demands of the general security to those of the individual life, and the exigencies of the condition of internal conflict due to its historical origin, have left their mark upon the subject. Only continued and continuous study by jurists of the first order can do things of enduring value for a body of law in such a state.

Outside of the English-speaking world these things have long been understood. The nineteenth century law teachers of continental Europe carried scientific study and development of the criminal law a long way. On the Continent, every land has conspicuous leaders in the scientific treatment of criminal law. In every land strong teachers and creative writers and investigators may be found in criminal law no less than in public law and private law. Indeed, the Universities of continental Europe specialists in criminal law have known or have learned how to work with specialists in all sciences that bear on criminal investigation and penal legislation and administration. We, on the other hand, have all but left the field to enthusiasts and cranks and charlatans. Such progress as we have made in the United States in the past half century has been in penal treatment, in the juvenile court as an agency of preventive justice, and quite recently in the beginning of co-operation among the agencies of prevention, detection and investigation. Lawyers may claim some part of the credit for the second. But they have no claim to credit for the other two. The law schools have had no part in any of these things. Moreover, because they have neglected the substantive criminal law and penal administration, much of the good which was achieved in the last generation is imperilled. Much which represents American creative resource, applied to problems of penal treatment intelligently and at its best, is not unlikely to be undone for a season while the public is groping for the causes of unsatisfactory administration of criminal justice and is experimenting with temporary legislative cures. A better organized, scientifically developed criminal law, such as can come only from continuous and unhampered work of legal scholars in our law schools, would do much to relieve the

pressure upon some of the most hopeful achievements of American inventive genius as applied to the problems of penal treatment.

For two reasons I have spoken chiefly of the need of bestirring ourselves to find and develop great scholars and teachers in criminal law, comparable to those whom we have found and developed in every nook and corner of the private law. One reason is that the work of the other agencies which will some day make for a better criminal justice will presuppose, will have to be done upon or at least along with the work of such scholars. What has been done in the restatement of subjects of private law by the American Law Institute was made possible by the long continued thorough analytical and historical work of American law teachers from 1870 to 1923 which went before it. Nor should we overlook the work of law teachers which went before and entered into our uniform state laws on commercial subjects. Long continued work of the same sort by scholars of the same calibre is needed before there can be a comparable restatement of our criminal law, and such a summing up of American criminal law at its best must go before any substantive overhauling of enduring value. The second reason is that we should be able to raise up the needed scholars in criminal law with our schools, our equipment, our resources, our faculties as they are. What is called for above all is that living interest in the subject without which no endowments, no equipment, no resources, no faculties can avail. Given this interest, we shall find leaders in criminal law as we have found a Wigmore for evidence, a Williston for contracts, a Beale for conflict of laws. This we can do, in the words of the poet, "without edifices or rules or trustees or any argument," as we have done in the past for so many other branches of the law.

So much for what we may do, as things are, toward a better criminal law. Our ultimate program, however, calls for things which law schools cannot do—things toward which and in which they assist, but which are outside of their immediate work. These things must be done in institutes for research and in ministries of justice.

Great things will be done presently when the public has learned to provide adequately for research in law as it has provided and is providing for research in every other field of human interest. Something more is needed than subsidizing law teachers to expend their energies outside of the schools upon the fringes of the criminal law or its contacts with the social sciences. Research in criminal law and procedure must go on co-operatively with research in the whole field of criminal justice—criminal investigation, police and preventive tribunals, the medical and psychological relations of criminal law and criminal administration, the causes of crime, physical, social and economic, and penal treatment. All the resources of the social sciences should be brought to bear co-operatively in such research if it is to be effective.

In the end, too, we must have ministries of justice. A tithe of the money and organized effort which politically organized society puts into preparation for war would make our preparation for the perennial contest with crime in time of peace much more effective than our war preparations prove to be when war comes. There is no time on this occasion to argue for ministries of justice. It is enough to say that the federal department of justice has been moving in this direction, that judicial councils, as they are in some states, are another move in this direction, and that such a ministry has been proposed by at least one chief executive to his state this year. But an effective non-partisan ministry of justice and a bureau of public prosecution cannot be combined and a ministry of justice is called for for matters quite beyond the scope of effective action of a judicial council.

So while we are laying out large plans for research and are urging ministries of justice, let us not overlook what we may do as things are and with what we have at hand. Let us not forget that we have yet to do for criminal law in our law schools what we should have been doing a generation ago.

Making Criminal Prosecution More Effective

. . BY GEORGE Z. MEDALIE

Former U. S. District Attorney for Southern District of New York

THE recent recommendation of the Advisory Committee on Criminal Justice of the American Law Institute for the production of a Model Code of Criminal Law reflects the progressive trend of recent times toward a more practical and effective method of coping with the criminal menace. It is contemplated that the Code will embody "not only the rules of substantive law and procedure, but also the organization and administration of courts and other agencies for the prevention, detection and prosecution of crime and delinquency." It insists that "the Institute should endeavor to create a Code more nearly suited to modern social and economic conditions," with the protection of society as its basic aim.

An aroused public opinion has overcome legislative inertia with resultant recent statutory enactment of several of the advocated criminal law measures in a number of our state jurisdictions. Towards this accomplishment, the American Bar Association has taken an aggressive lead, aided immeasurably by the. United States Attorney General's law enforcement program.

The intensive campaign has been productive of radical procedural improvement in the administration of the criminal law. The auspicious response augurs the substantial adoption, in the near future, of the National Bar Criminal Law Reform Program. Within the past year, legislatures have taken the element of surprise out of the alibi

defense by requiring notice thereof in advance of trial. The prosecutor, being forewarned, will be forearmed. There was much support for the proposal that the jury, in reaching its verdict, may consider the fact that the defendant failed to take the stand in his own behalf. Under our present practice, the jury is forbidden to draw an adverse inference therefrom. The reason for that restriction has long ago disappeared. Originally, a defendant was disqualified from testifying in his own behalf. For that reason it was established that he ought not to be prejudiced by a circumstance beyond his control. Today, the witness chair is his for the asking. There is, therefore, no justification for the present rule.

The argument is sometimes made that procedural reform, in general, is comparatively unimportant; that the inefficiency and corruption which is frequently found in our law enforcement personnel will destroy whatever effect these reforms might otherwise have. It is persuasive, nevertheless, that an efficient personnel should not be ham-strung by an archaic and antiquated criminal procedure. The movement for improvement in our enforcement personnel is important; but it is equally important that courageous and efficient law enforcing officials should be implemented with effective weapons, adequate to cope with increasing criminal resourcefulness.

Meanwhile, it is imperative to adopt a more immediate and practical means, in the interest of efficient organization of police and prosecuting agencies, if we expect to equip ourselves adequately against the current crime challenge. The temper of the press and the public is attuned to an immediate campaign calculated to eradicate the racketeer who infects legitimate business. The disrespect in which the criminal law is held today is due, in large part, to the growth of racketeering and the inability of the authorities to cope with it. Crime, today, is organized on a commercial basis, capable of perpetrating its depredations by ramifications which, the public has good reason to believe, include alliances with business and politics. The gangster in many localities has a political value. He is a source of both legal and illegal voting in return for whatever favors politics may confer upon him. He has frequently been helped in the lower courts. He looks to politics for "pull" to extricate him from his difficulties. In some jurisdictions, he is successful. This varies with time and place.

Several years ago, a political club in New York City, existing under the tutelage of a City Magistrate, honored its judical patron at a dinner. As a result of a robbery perpetrated upon the diners, it became public information that this club's leading members, or at least friends, included some of the most notorious gangsters and racketeers in the community. One of them was later shot dead while acting as bodyguard for one of the leading gangsters whom the police were attempting to arrest. In this instance, at least, the alliance between the racketeer-gangster and politics was not concealed, but open and brazen. To the extent that the public is willing to tolerate such a condition, it must suffer proportionately.

The influence of the racketeer is so widespread in some of our larger cities, and the terror of him so great, that the subject has developed a nation-wide interest. Remedies are being sought, and at present there is an earnest effort to meet the evil. The business man who is willing to resist the racket, if he dares, still fears to speak and to bring his complaint to the authorities. With reasonable protection the citizen who finds himself menaced by the racket and is willing to resist its exactions will have the courage to complain as well as to resist. Given adequate protection and a fair attention to his complaint, the citizen is bound to develop that attitude into a widespread public sentiment. An efficiently operated police and prosecution organization that is likely to play short shrift with this menace is a most persuasive inducement to the honest business man to resist the intrusions of the racketeer.

Most of the schemes for local government reorganization deal primarily with matters of finance and economy, education, public welfare in the form of hospitals, correctional and relief projects, supervision of building and efficient and fast transportation. I have no desire to underrate the importance of these things. They are essential, but no plan is complete that fails to make full provision for an adequate system for the protection of the community against crime by the reorganization of our present system of policing and prosecution. Experience has educated us to the necessity of having a police organization that extends beyond a narrow local area as distinguished from independent local subdivisions. This is borne out by the increasing activities of our state police organizations. As in the federal system, detection and prosecution of crime require for their effectiveness an increasing centralized control and direction from both the viewpoint of investigation and of prosecution. If that responsibility were vested in a single responsible official, an effective and co-ordinated system would undoubtedly result. Responsibility for either corruption or inefficiency would then rest with a high official whose conduct is brought more sharply to the attention of the voters.

The scattering of responsibility in matters of local prosecution has created a public attitude resulting in the increased demand for the assumption of local prosecuting powers by the federal government. This engenders a definite loss of the sense of local responsibility. It is necessary that the exercise of local power should not fall into disuse. However, unless a more efficient system is developed than now exists, that will be the inevitable tendency, with the consequent loss of usefulness and of the ability for self-government. The loud and insistent demands for federal relief for local defects in the administration of the criminal laws should sound a note of warning that there is danger of the breakdown of local government and of an abject surrender of local responsibility.

In most instances, the activities of the police and prosecutor deal with the occasional aspects of the racketeering problem, such specific cases of assault and extortion. There is a conspicuous failure in reaching the organization itself and its leaders. Commercialized crime can be successfully combated only by thorough-going investigation continuously pursued on a large and organized scale comparable with the scope of the racket itself. Local law enforcement, unfortunately, has enjoyed little success in this direction. The federal govern-

ment, however, has experienced more gratifying results. Notwithstanding limited jurisdiction and restricted statutes, the Federal Department of Justice has been able to jail some of the principal racketeers and corruptionists who had successfully escaped or defied prosecution by state or county authorities.

If society is to be afforded a fighting chance to encompass the racket, it must organize a skilled investigating agency capable of long sustained effort. Close co-operation and constant initiative by the prosecutor are indispensable. The better tradition frowns upon the prosecutor who expects his case to be served up to him on the proverbial silver platter.

The continued insistence for an improved personnel in police and prosecuting organization may produce more effective groups. It is important that places in such organizations shall not be mere political prizes.

With our present system of balloting, it is clear that even in exceptional cases the public rarely makes a selection on the basis of its own opinion and judgment.

Without any reflection on his opponents, may I call your attention to the candidacy of Ferdinand Pecora for District Attorney of New York County in 1933? His tremendous popularity and the general public acclaim of his unquestioned ability would undoubtedly have resulted in his election to the office of District Attorney if that were the only office voted for. Nevertheless, the vote showed that, in the main, the public discriminated very little, but followed the three main party lines of the complicated municipal election.

Frequently, a competent prosecutor is handicapped and embarrassed by local political obligations. His assistants, more often than not, are appointed through political dictation rather than upon the basis of their own fitness and merit. As a consequence, the prosecutor's office invariably lends a willing ear to the local political leader.

Efficient law enforcement requires the removal of the prosecutor's office from local political control, with the appointment of the prosecutor vested in the highest responsible officers of the state.

What has been recognized in federal operation must shortly be regarded as the solution for most local situations. County lines and municipal areas must not mark the limits of effective police or district attorney operations. A central organization as effective as our national Department of Justice, in both its investigating and prosecuting aspects, must be developed by genuine efficiency and responsibility for successful attack upon the most serious manifestations of criminal activity. In any event, it would be a material accomplishment toward co-ordinating the efforts of police and prosecutor if, in our important metropolitan communities, at least, the responsibility of these offices was vested in the chief municipal officer. The problem of selecting a mayor responsible for the whole city is a big enough burden upon the average citizen. To wish on the voter the exercise of judgment in the selection of county and borough officials is expecting a discrimination which can rarely be exercised. The important business of selecting a district attorney becomes a matter of minor importance in the actual casting of the ballot, even though the citizen is aware of its supreme importance in the operation of his government.

In the case of the City of New York, for example, the Mayor is properly held responsible for the preservation of order in the city and for keeping it reasonably well rid of crime and racketeering. His responsibility, however, is only partial. It is limited solely to a test of the efficiency of his police service. He and his police commissioner have no responsibility whatever, nor are they entitled to any credit, for the work of any of the five district attorneys of the city. If, however, the responsibility were complete as to both policing and prosecution, an effective and co-ordinated system would undoubtedly result. If it broke down or proved ineffective, the finger of reproach would be pointed to a single official whose election is a sufficiently important matter to engage the attention of the voters who would not lose sight of this responsibility.

The federal government has pointed the way. Its pattern should be emulated in local jurisdictions, both in the field of prosecution and of investigation. Local law enforcement is behind the times. It can be considerably modernized if local police organizations establish investigating bureaus modeled after the Bureau of Investigation of the United States Department of Justice. These bureaus should be manned by experts and equipped for the patient pursuit of criminals of the racketeering type and of hidden promoters of graft and corruption. Under a single responsible head, the investigating and prosecuting units will naturally co-operate in the building of cases. Too often are we compelled to observe the sorry spectacle of indifference by police and prosecutor toward the other's activities.

The great point of weakness in the local police system is the detective bureau. It is not my intention to criticize the efficiency of the detective organization bureaus generally. I think, on the whole they do good work, but their usefulness is extremely limited. The personnel is ordinarily selected from the uniformed force of patrolmen. There is virtually no test of peculiar fitness, though courage and intelligence are sometimes recognized in assignments to detective work. They are not, however, fundamentally investigating agencies in the true sense. Efficient as their work may be in the case of the ordinary crime, such as burglary or robbery, assault or murder, these organizations have failed to show any marked aptitude for the successful investigation of highly organized rackets, such as prey on many industries in our cities. They are neither equipped nor organized for such service.

I do not intend to suggest the abolition of the existing detective organizations in our cities. I favor their continuance for routine operations. In addition to this group, in order to deal with organized rackets, an additional body of highly trained, carefully selected men must turn their attention to the more pressing present-day problems which cannot be handled as mere routine. To break up a well organized racket, operating in complex and underground channels, highly and efficiently organized itself, requires a high intelligence, skilled direction, great patience and perseverance.

The efficient model is found in the Division of Investigation of the United States Department of Justice. Its personnel is superior. The requirements for admission as to education, intelligence and personality may well serve as a model for similar organizations for the specialized work in our city police departments. It is not necessary to guess. Experience has shown the value of such a personnel. A few dozen such men in each of our large cities, freed of routine police organization, disconnected from the rest of the police force, and directed by a non-political appointee, who, too, is not a part of the uniformed organization, would, in a comparatively short time, help restore confidence in the enforcement of the criminal law. A state bureau of the same character could take up the slack in many places. The most efficient results could be obtained if, without needlessly interfering with the local operations, all of the forces of criminal investigation and prosecution were centered in a single state official, appointed by the Governor and responsible directly to him. In many states this would doubtless require constitutional amendment before full responsibility could be centered in the Governor himself. It will, of course, take a long time before such changes can be made, but in the meantime there is no need for delay in reorganizing and strengthening the criminal investigation machinery of our large cities. Efficient investigation is indispensable to effective prosecution.

An investigating bureau of the type suggested may be effectively aided by the prosecutor through the instrumentality of grand jury proceedings. Experience proves the value of this method as distinguished from the scattered efforts resulting in sporadic arrests and prosecution for apparently disconnected offenses in the operations of major criminals that invariably fail of the real objective.

In spite of the limitations of federal authority in the prosecution of crime, and within those limitations, I have found it possible for the district attorney to develop his case. I recall, for example, in connection with a labor racket where members of the union protested against the methods of their so-called leader, that we were engaged for a year in the preparation of a case by the slow and painful process of examining every contractor and builder with whom this racketeer might have done business. We were met with denials and professions of ignorance, but after several hundred had been examined and the wealthiest of them had been committed for contempt and sent to jail for giving evasive answers before the grand jury we emerged with a dozen tolerably good witnesses. We went to trial and obtained a conviction. We charged income tax evasion, but we also proved extortion. In such cases, the witnesses do not voluntarily come to the prosecutor nor are they pleased with his invitation to call upon him. If, however, there is the willingness to go through the mass of discouraging work over a long period, not infrequently a case can be developed against seeming impossibilities, although it is so much easier for a lethargic district attorney to say, "I have no complaint before me and I have no evidence." The leader of organized crime seldom appears in the picture, but he can be ferreted out by vigorous pursuit. The effective leadership of the federal government in the prompt and thorough investigation of the kidnapping cases, and in the swift and relentless prosecution of those involved, has set an example which will doubtless stimulate and solidify efforts for placing us on the list of law-abiding nations. The important newspapers of the country have recently indicated in news articles and editorials that criminal law reforms is news, and will be so treated. Such publicity not only represents a refreshing contrast to the news of violent crime and of escaping gangsters, which fill the pages of even our most respected dailies, but has sound educational value in advising the public of the steps which must be taken if crime is to be reduced.

Effective machinery can be made available in our various jurisdictions. Outstanding gubernatorial and legislative leadership, spurred on by public opinion, can give impetus to a program of crime legislation well calculated to more adequately equip the determined prosecutor in a relentless war upon the lawless fraternity.

The Attorney General's Program for Crime Control . .

BY JUSTIN MILLER

Chairman of the Attorney General's Advisory Committee on Crime

ATTORNEY GENERAL HOMER CUMMINGS is planning a program for crime control; nationwide in scope, and designed to approach the problem from every practical angle. How this can best be done is a matter of serious concern to him and presumably of considerable interest to the lawyers of this country. The fine spirit of co-operation which existed between the Attorney General's Committee and the Committee of the American Bar Association in the planning and carrying out of the Crime Conference held last December in Washington, is evidence of the desire of the Attorney General to have and to use the advice of this Association in the planning and carrying out of his larger program. He has recently said in a public address: "Of course, I have no thought that in the Department of Justice alone resides the wisdom and experience to deal with the problem of crime." It is with this in mind, then, that I come before you today to consider with you various phases of the great national problem of crime prevention and criminal law

administration and to bespeak, on behalf of the Attorney General, your interest, your advice, and your co-operation.

The most striking discrepancy in the national attack on crime has been the lack of leadership and a co-ordinated program of action. Each city, each county, each state, has carried on a campaign of its own, of greater or less intensity, without much regard for the others. Each professional group which touches the problem from one angle or another—the educators, the sociologists, the police, the psychiatrists, the physicians, the lawyers, the preachers—has laid out its own campaign, with a more or less careless abandon and disregard for each of the others. Recognizing the existence of this situation; the need for co-ordination of effort; the impossibility of success without intelligent interplay of professional procedures; the Attorney General has undertaken to provide that leadership and to create an agency for common action in the United States Department of Justice.

This he proposes to do, not by erecting a "great, imposing, and expensive facade of new functions," but by initiating the work on the basis of previous experience, and by permitting it to develop "as need arises and as there is assurance that we are proceeding in the right direction." With this in mind, he plans to expand the functions of the Bureau of Prisons and the Bureau of Investigation and to add a new Bureau of Crime Prevention, in which will be concentrated all of the functions connected with the proposed new program "not heretofore allocated or hereafter to be allocated to the other two Bureaus" to which reference has been already made.

The program does not depend in any large measure upon wide extension of federal criminal jurisdiction or federalization of state and local police forces; proposals which were urged two or three years ago, but which have been definitely and consistently repudiated by the Attorney General, whenever they have been brought to his attention. It does include, of course, an intelligent development of federal criminal law, through legislative action, and within the limits imposed by the Constitution; and it does include vigorous and effective apprehension, conviction and punishment of criminals who violate the provisions of that law."

The problem of determining the proper scope of federal criminal law has been a difficult one. In the earliest opinions the proposition was asserted that the exercise of criminal jurisdiction in common law cases was within the implied powers granted to the federal courts. Later this doctrine was repudiated, and it became definitely established that in order for a federal court to take jurisdiction, "It is necessary that a sufficient statutory authority should exist for declaring any act or omission a criminal offense . . ."; although it has been declared proper for the courts to look to the common law for definitions, both of crimes and of terms customarily used in the criminal law.

Neither is the field of federal criminal law jurisdiction specifically outlined in the Constitution. Except for a few express specifications such as those providing for the punishing of treason, counterfeiting, piracies, and for suppressing insurrections, we must look to other grants of power, such as "regulating the territory or other property belonging to the United States," levying taxes, establishing post offices and post roads and regulating foreign and interstate commerce, and work out in connection therewith, implied power to use the criminal law as one agency for accomplishing these results.

During the century and a half of our national existence there has been continuing activity in the development of this federal criminal law; although different branches of the law have undergone greater development at one period or another. Thus, the laws governing piracies and other offenses upon the seas and against the law of nations were developed almost entirely prior to 1850; the laws relating to the slave trade and peonage were passed during two periods, the first prior to 1825 and the second during the period of the Civil War and reconstruction; the laws defining offenses against the postal service came largely during the quarter century from 1850 to 1875 with occasional additions from time to time since then; the use of the commerce clause as a basis for federal criminal law was apparently unthought of prior to 1850 and received its main development between 1900 and 1915, with occasional additions since then; offenses against neutrality made their appearance in the federal law during the period immediately after the war of 1812 and in 1917 about the time of our entrance into the World War.

Although some may have had a contrary impression, the extension of federal criminal laws has not been great during the last ten years, and the new crimes which have been created bear close resemblance to those which have been created in previous decades and represent logical developments to meet new conditions. So in connection with the recently enacted law making it a federal crime to rob a national bank it is interesting to compare the law of 1863 making it a crime to steal the personal property of the United States; the law of 1867 making it a crime to commit robbery of property of the United States; the law of 1872 making it a crime to injure the United States mail bags, to steal post office property, to break and enter a post office, to injure letter boxes. The recently enacted law making it a federal crime to kill a federal officer has its counterpart in the law of 1790 making it a crime to obstruct process or assault an officer and the law of 1872 making it a federal offense to assault, wound or rob a custodian of the mail. The National Stolen Property Act passed in 1934 is a logical development of the series of laws which provide penalties for transportation in interstate commerce of articles which, for one reason or another, have acquired an illegal character; for example, the law of 1895 prohibiting the transportation of lottery tickets in foreign or interstate commerce, the law of 1897 prohibiting the importing and transportation of obscene books, the law of 1900 prohibiting the transportation of illegally killed game birds and animals, the law of 1912 prohibiting the transportation of prize fight films, the law of 1919 prohibiting the transportation of stolen motor vehicles and the law of 1932, passed with the approval of Attorney General Mitchell, prohibiting the transportation in interstate

commerce of persons kidnapped or otherwise unlawfully detained. New laws which were enacted by the Seventy-third Congress at the suggestion of Attorney General Cummings reveal in several instances the changed conditions which produced the necessity for the new laws; for example, the law making it a crime to conspire to transport persons kidnaped and unlawfully detained is obviously supplementary in character and necessary, effectively to carry out the purpose of the Lindbergh law just referred to; as is the law making it an offense to send threatening communications in interstate commerce. The law prohibiting the aiding of escapes from Federal penitentiaries or causing mutinies therein or introducing dangerous instrumentalities into Federal penitentiaries, the Federal Bank Robbery Act, and the Federal Anti-racketeering Act all provide interesting examples of laws made necessary by striking and outstanding criminal episodes.

One of the first obligations of the Federal government is the effective enforcement of criminal law in federal areas; thus preventing the use of such areas as havens for offenders. In order to accomplish this result, there was passed by the 73rd Congress a law providing that:

"Sec. 289. Whoever, within the territorial limits of any State, organized Territory, or District, but within or upon any of the places now existing or hereafter reserved or acquired, described in section 272 of the Criminal Code (U. S. C., title 18, sec. 451) shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or District in which such place is situated, by the laws thereof in force on June 1, 1933, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment."

As stated by the report of the Committee on the Judiciary of the House of Representatives, it was the policy of Congress, in adopting this measure, "to make the local, State, and Territorial laws applicable to acts committed in areas or reservations over which the United States has exclusive sovereignty and which have not been made criminal offenses under the Federal Law." This, of course, is in addition to the body of laws which have been adopted, over the years, to declare and punish specific offenses.

In other respects also the Attorney General's program of federal criminal law legislation is deliberately designed to aid the states in the solving of their own crime problem; for example, the law making it a crime for any person to flee from one state to another for the purpose of avoiding prosecution or the giving of testimony in felony cases. This law makes it possible for federal and state officials to cooperate in the prosecution of such cases, as by capturing and returning the offender to the state, or by prosecuting under the federal law. Another example is found in the law authorizing interstate compacts between two or more states for mutual cooperation in the prevention of crime. This law has fine possibilities and already a considerable activity has resulted in the state legislatures.

More striking than the developments in the federal criminal law itself, already accomplished and pending before the present Congress, is the efficacy of federal enforcement which has been accomplished by the Criminal Division of the Department of Justice under the direction of Joseph B. Keenan and by the Bureau of Investigation under the direction of J. Edgar Hoover. Without going into details of methods of organization or procedure, it is perhaps sufficient to refer to the recent statement made by the American Surety Company to the effect that bank robberies have been decreasing steadily since the Government began its intensive drive on crime more than a year ago. In that statement it said that in 1933 the bank robbery frequently dropped 37 percent as compared with the year before and that during 1934 there was a further drop of comparable degree. For the first six months of 1935 according to the same authority the robbery frequency rate has slumped nearly 50 percent and the trend is still continuing downward. Although these results are not of such character as to excite public comment as in the case of the relentless hunting down of kidnapers, nevertheless, they are even more important as indicating the efficacy of the Attorney General's program and the increasing protection which is thus being given to society.

Equally convincing demonstrations of the value of organization, central control, and trained personnel have been given by the Bureau of Prisons under the direction of Sanford Bates. The Federal prison on Alcatraz Island has become a synonym for effective control of the hardened criminal. There, under the most humane methods of prison treatment, there has been effected an isolation of these men which has resulted in removing them completely from the attention of the public and they have become, indeed, the forgotten men of today. Perhaps of even greater importance has been the work of the Bureau of Prisons in the development of its system of classification of prisoners, its prison camps and the building up of the conditions of sanitation and safety of county jails, throughout the country, in which Federal prisoners are housed. The use by the Federal courts of probation as a method of penal treatment has already assumed major proportions, initiated—perhaps—as a matter of necessity because the Federal penitentiaries were filled to overflowing. The system of Federal probation has now extended almost 100 percent throughout the United States and is being used in a large percentage of cases. The important consideration to be kept in mind in this connection is that the men who are being subjected to this form of penal treatment are living and working in the various communities under the supervision of trained men, and as distinguished from the condition which prevailed only a few years ago when convicted persons in almost equal numbers were allowed to roam at large under the "suspended sentence" without any pretense at supervision. Both in the field of Federal probation and Federal parole the success of men so released has been surprisingly great, and while criticism is frequently made, and should be made, of the inadequacy of state systems of probation and parole as administered in many of the states, it is heartening to note that such criticism is not being directed against the Federal system.

Enough has been said regarding the efficiency of the efforts of the various bureaus of the Federal Department of Justice and of the results which have come naturally from the coordination of work

and the careful selection and training of personnel. Enough cannot be said, however, concerning the cooperation which is being secured by the Federal authorities on the one hand and state and local authorities on the other. In every division of its work the Department of Justice has asked for, and has received, increasingly intelligent and friendly cooperation, and, whenever possible, has extended its efforts on behalf of state agents. It is obvious that in this direction much more remains to be done, because even assuming 100 percent efficiency in the administration of the Federal criminal laws, there would still remain a staggering percentage of offenses—perhaps 75 percent of the total, perhaps even 90 percent of the total—which remains and which will continue to be the problem of the state and local governments. Not only for the securing of effective cooperation, but also in order to insure reasonably effective work within their own domain, it is vitally essential that methods of organization, coordination and personal selection and training shall be adopted by the states similar in character to those which have been worked out by the Department of Justice.

Now you may well ask, if this be true, what part can the Federal Department of Justice play in achieving the ends last mentioned and how can the Attorney General's program encompass these objectives. It was such questions as these which caused the Attorney General to call the Crime Conference which was held in Washington last December, and it was to help him in answering those questions that he appointed the Advisory Committee on Crime which has been at work since the adjournment of the Conference. Recently he has announced a program in connection with these phases of the problem and he proposes in this field, as well as in the field of Federal criminal law, to provide the leadership and the assistance which seems so vitally necessary. First, as regards the matter of personnel, the Attorney General has announced that commencing this summer the courses of instruction and training which are being given in the Bureau of Investigation at Washington will be open, without fee or tuition expense, to properly qualified state and local officers. He has announced that so soon as arrangements can be made therefor, similar instruction will be made available in the Bureau of Prisons for the instruction of state and local officers who are concerned with the custody of criminals either in penitentiaries or prison camps, or on probation or parole. He has announced that the proposed new Bureau of Crime Prevention, when authorized by Congress, shall provide similar instruction for United States Attorneys, Marshals and Commissioners, and that so soon as practicable, these courses shall be open to properly qualified state and local officers. In this way he expects to make possible the continued training of an increasingly high grade of law enforcement and law administrative officers throughout the entire Federal, State, and local system.

The Attorney General realizes, moreover, a point which was emphasized by the December Crime Conference; namely, that in order to secure the training, the appointment, and the retention in office of properly qualified personnel, there must be built up throughout the length and breadth of the country a new attitude upon the part of the people toward the question of crime, its prevention and its repression. Therefore, it is his plan that the Department of Justice, as reconstituted, shall undertake to provide information and education for responsible citizens throughout the country in the whole broad field of crime prevention and criminal law administration. Although the method by which the objective shall be achieved has not yet been definitely outlined, it is anticipated that there shall be made available in Washington cross-sectional background courses which shall be understandable and available to interested citizens who may wish to take advantage thereof, thus qualifying themselves for effective leadership in their states and communities. It is anticipated that there shall be prepared and published from time to time informative material concerning important phases of the problem and that crime conferences similar to the one held in December, 1934, shall be held from time to time in Washington, to which shall be invited outstanding experts who may be expected to make contributions similar to those which were made at the first crime conference, herein referred to. Moreover, it is planned that the Attorney General shall make available for state and local crime conference, institutions of public affairs, colleges and universities, so far as possible, members of the Department of Justice who may be qualified to participate in the planning and carrying out of programs of information and education.

As has been said before, it is not pretended that all knowledge in this field lies with the Department of Justice. Many individuals, organizations, and associations have been working in parts of the field for many years. Important contributions have been made in the past and we may expect a continuation thereof for the future. One of the most pathetic facts of our present situation is that, although effective methods of crime prevention and criminal law administration have been worked out in particular localities, other localities may remain for years in comparatively complete ignorance thereof; for example, there have been developed over a period of years in Los Angeles County, where this meeting is being held, several procedures of very great value. In the field of crime prevention the Los Angeles County system of coordinated community councils is regarded by experts as being one of the most valuable methods of community crime control yet devised. There has been in this area for a number of years an Academy of Criminology which holds regular meetings throughout the year participated in by representatives of all of the various professional groups concerned with this problem and which has provided more effectively for community education in this field than has been true in any other city in the United States. Los Angeles City and County were the first to develop a public defender system which is now a going concern, recognized for its high value by the people of this area who would not think of going back to the conditions which prevailed before its adoption. Under the supervision of Kenyon Scudder there has been developed in Los Angeles County one of the most effective probation systems in existence in the United States. Now the painful fact must be faced that in many parts of the United States such institutions as the Coordinated Council of Community

agencies, the Academy of Criminology, the public defender system, and the probation system are practically unknown. Here and there throughout the country we find men who are properly qualified to perform police work, probation work, juvenile court work, but rarely do we find in one community more than one department which is properly equipped for effective work for carrying forward a whole city or state program of crime prevention or criminal law administration.

Similarly some of the outstanding professional and civic associations of the country have undertaken programs for particular fields, designed to make similar contributions for the improvement of the general situation. The National Bar Program of the American Bar Association is a good example. The work of the American Law Institute in the preparation of a Code of Criminal Procedure and its proposed program for the preparation of a Code of Criminal Law and Administration is another. The National Probation Association, The International Association of Chiefs of Police, the American Prison Association, the various leagues of municipalities are undertaking programs of work, each one of which, if known by the people of other states and communities, could be made to contribute materially to cutting down the staggering cost of crime and to the social disorder which results in this connection. It is the intention of the Attorney General that the work of these various organizations, the methods and procedures devised by them, shall be studied and made available to all other agencies and interested groups and individuals. It is hoped that there may be developed, perhaps, through the Department of Justice, a clearing house for the mutual advantage of all such agencies and individuals similar to the clearing house which has been established by the Bureau of Investigation in connection with the classification of over five million finger prints now used and contributed to by the various police departments of the country.

Those who are familiar with the progress which has been made in this field during recent years must be impressed by the contribution of scientific research. This is particularly striking in the field of detection and apprehension of criminals. The blundering methods of the constable and sheriff which were in vogue, generally, only a few years ago and which, unfortunately, are still in vogue in many parts of the country, have been completely outmoded by the new methods now in use by the Bureau of Investigation and the highly developed police departments of some of our states and larger cities. Equipped with criminological laboratories, staffed with experts in the various fields of chemistry, physics, bacteriology and many others work is being done which is miraculous as compared to that of the police of only two or three decades ago. In the field of mental hygiene and psychiatry, similarly promising results are anticipated. In a few places psychiatric clinics have been established and are making reasonable contributions both in crime prevention and crime repression. Much remains to be done in this field. Much remains to be done in testing and developing techniques already in operation, such as probation, parole, and juvenile court work. Much remains to be done in the development of new techniques and administrative methods. The coming of properly selected and properly trained personnel and adequately equipped laboratory facilities, may well be expected to produce results ten or twenty years from now which will be considered equally miraculous when compared to the methods of today. The Attorney General, therefore, has announced that in each of the three Bureaus of the Department of Justice which are to be charged with the carrying out of his new program, research work is to be undertaken in all practical fields of criminology, crime prevention and criminal law administration where there is any reasonable probability of achieving practical results.

As has been said before, these plans are tentative. It is proposed to proceed step by step in the development of the new program. The Attorney General is anxious to have the advice, the support, the interest, and the cooperation of the members of the profession of law and particularly of the American Bar Association. He values highly the achievements which have already been secured in co-operation with this Association and he is anxious that that cooperation shall be continued and made more effective.

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ROBERT B. TUNSTALL
Vice President, Fourth U. S. Judicial Circuit

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Chicago, Illinois

FOOTNOTES TO THE ANNUAL MEETING

The growing desire of members of the Association to have a more active and personal participation in its affairs is very much in evidence these days. There were various manifestations of it at the Los Angeles meeting.

One of these was the organization of two new Sections—the one on Municipal Law and the Junior Bar Section. The increase in the number of Sections and their continued vitality have been a striking feature of the last decade of Association history. This has no doubt been due in part to the appeal they make to specialists, but probably to an even greater extent, to the fact that they give the individual member a better opportunity to do something. Heretofore the principal indication of this desire for a greater participation has been furnished by the rapid organization of these subsidiary bodies.

Another manifestation of this spirit was furnished by the proceedings of the Conference on the "Better Organization of the Bar." There the desire took a new and more direct form—that of a criticism of the present organization of the Association. The discussion at the Conference revealed a strong and apparently almost unanimous sentiment for a more democratic and representative organization of the Bar. None of the suggestions there made could be called radical, and most of them had been tried with success in a more limited field. They were significant mainly as showing the direction in which the current of opinion is running today.

Another manifestation of the spirit, within the present framework of the Association, furnished one of the most interesting episodes of the Annual Meeting. A number of members desired the opportunity of voting for more than one candidate for President. Some were perhaps surprised to find how easily their desire could be gratified. All that was necessary was to nominate someone from the floor in opposition to the nominee presented by the General Council—the official nominating body. This was done and the exciting spectacle of an actual election contest was staged.

The President has declared himself in sympathy with this natural desire. In accepting the gavel from his predecessor, President Ransom said that the American Bar Association belongs to the practicing lawyers of this country, and it can and will be made what they want it to be. "At the present time," he continued, "I believe that they want a better and more representative Bar organization, an organization that is under the democratic control of the lawyers of the whole country, with machinery which makes it responsive to their wishes, alert to their needs as a profession, and entitled to speak their views with an authoritative voice. . ."

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From time to time there is the suggestion that the Federal government undertake something which may serve as a model to the States. This position of model seems already to have been achieved by the Department of Justice—if we may judge from statements made in various addresses at the National Bar Program Session on "Criminal Law and Its Enforcement," and from the general discussion that followed. The Department's organization and methods of investigation and prosecution were held up as a bright example of what such an agency should be. And of course many of the recommendations for action in the States, as well as some steps actually taken, are directly due to the Department's success.

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The Executive Committee has decided that the next meeting will be in Boston. The date will be announced later, possibly at the coming midwinter meeting. This will be the fourth time that the Association has met in Boston, the three former meetings being in 1891, 1911 and 1919.

ASSOCIATION'S WORK AT LOS ANGELES SUMMARIZED

RECOMMENDED passage of pending bill to cure evils of soliciting Mexican divorce practice in the United States; of Federal Interpleader Bill, as recommended by Committee of Insurance Law Section; of H.R. 6795, to increase classes of undesirable aliens subject to deportation.

Disapproved H.R. 5356, to provide for salaried referees and otherwise amend Bankruptcy Act; approved appointment of a Committee to oppose S. B. 2512, known as the "Black Anti-Lobbying Bill;" disapproved provision of H.R. 8492, depriving Federal and State Courts of jurisdiction of actions for refund or credit of taxes heretofore collected or accrued under Agricultural Adjustment Act, and other provisions of measure.

Authorized creation of two new Sections of the Association—the Section on Municipal Law and the Junior Bar Section; Adopted Amendments to Constitution and By-Laws abolishing Committee on Publications.

Recommended that written Bar examinations include questions on legal ethics and that there be an oral examination of applicants for admission, touching their knowledge of, and adherence to, principles of professional ethics, by Committee on Character and Fitness or other like agency.

Authorized Committee on Professional Ethics to express its opinion when consulted by "any public official before whom lawyers appear;" also authorized same Committee to hear charges of professional misconduct "upon complaint preferred," instead of permitting it to do so on its own motion.

Approved Uniform Airports Act, Uniform Aeronautical Regulatory Act, Uniform Vendor and Purchaser Risk Act, and Uniform Transfer of Dependants Act, and recommended them to the States for adoption.

Approved plan of character examination used by National Conference of Bar Examiners, to investigate character and record of migrant attorneys applying for admission in the various States on a comity basis, and recommended use of this service by the several States.

Approved certain amendments to the Trademark Acts of 1905 and 1920; disapproved H.R. 173, providing counsel for indigent patentees; disapproved H.R. 4523, requiring registration of certain licenses and agreements in Patent Office; disapproved H.R. 383, providing for granting of compulsory license under patents; approved H.R. 5384, so far as it repeals existing Act compelling certain suits to be brought in Court of Claims.

Approved resolution of General Council, approved by Executive Committee, instructing Special Committee appointed to consider recent Federal Legislation as affecting rights of American citizens, to report by Nov. 1, and providing that the report shall be considered at a joint meeting of the Executive Committee and General Council.

Promoted Conference on "Better Organization of Bar" at Los Angeles and invited suggestions for consideration. The Conference recommended action looking to some form of organic union between the Association and the State and Local Bar Associations, and made certain other suggestions.

Approved H.J.R. 237, providing for the use of the Holmes legacy in building and maintaining a collection of works on Jurisprudence in the Law Library of Congress, to be known as the Oliver Wendell Holmes Collection.

Approved resolution favoring adoption of Hague rules by a program involving rescission of ratification of Treaty, Federal legislation putting Hague Rules into effect in this country, and re-ratification of Treaty with reservations embodying the legislative provisions.

Approved, in principle, S. 1629, for regulation of motor carriers; approved principle of water carrier regulation along general lines set forth in S. 1632; recommended enactment of H.R. 3263, restoring Sec. 4 of Interstate Commerce Act to its form prior to Mann-Elkins Act; declared existing Pure Food and Drug legislation inadequate and called for it to be strengthened in the public interest.

Favored legislation conferring jurisdiction on a Federal Administrative Agency to pass in advance on cooperative trade agreements and to grant immunity from anti-trust laws to parties whose agreements are not disapproved; favored the enactment of legislation, in line with the Schechter decision, conferring jurisdiction on such Federal Administrative Agency to hold hearings and make findings as to whether the specific trade practices of a group are within the statute, and providing a means, safeguarded by judicial review, whereby the observance of such findings may be required.

Recommended certain amendments to the Securities Act of 1933.

Approved resolution, presented by Section on Criminal Law, relative to insanity as a defense in criminal cases. (See Proceedings.)

Favored continued development of Law Library of Congress and establishment of a Chair of Criminal Law and Criminology in the Library.

Opposed enactment of H.R. 33 or any other legislation increasing jurisdictional minimum in Federal Courts to $10,000, exclusive of costs; opposed S. 2524, as to transfer of place of trial of suits in Federal Courts; opposed H.R. 2763, compelling Government officials, etc., to give full faith and credit to decrees, etc., of State Courts of record; opposed H.J.R. 34, or any similar resolution to change method of amending the Constitution.

Directed Committee on Federal Taxation to submit suggestions as to proposed legislation to the Association in 1936 or earlier, if need be, to the Executive Committee; opposed S. 2512, requiring registration of lobbyists so far as it might be construed to apply to lawyers appearing before the Treasury Department and the U. S. Board of Tax Appeals.

Approved enactment of legislation extending admiralty and maritime jurisdiction to damage or injury caused by vessel in navigable water, notwithstanding the fact that it was done or consummated on land.

Passed resolution expressing sincere appreciation of the generous hospitality of the Bar of California, the Bar of Los Angeles and the clubs and organizations and citizens of Los Angeles.

NATIONAL BAR PROGRAM ADDRESSES ON A MORE EFFECTIVE DISCIPLINARY PROCEDURE

Enforcement of Professional Ethics . . .

. . BY HON. JOHN J. PARKER

Judge of U. S. Circuit Court of Appeals, Fourth Circuit

I HAVE accepted the invitation of the President to address this meeting on the subject of "Enforcement of Professional Ethics," not because I am conscious of any special ability to deal with the subject, but because I feel that it is one of transcendent importance at this time and that it is the duty of each of us to do what lies within his power to impress its importance upon the profession. It is of importance, I think, for two reasons: In the first place the primary problem of preserving our civilization is a problem of the formulation of proper standards of ethical conduct for the guidance of the people generally and the enforcement of these standards. The legal profession must lead in the formulation and enforcement of such standards; and it will be powerless to do so if it does not recognize and enforce proper standards within its own household. In the second place, not only the existing leadership, but also the usefulness and very existence of the profession are threatened by a loss of public confidence resulting from the misconduct of a very few of its members.

Never before, I think, has there come to the profession such an opportunity for constructive leadership as is presented today. We have moved forward into a new era in the world's history. The standards of the fathers are inadequate in the changed conditions in which we find ourselves; and the problem which confronts us as a people is to formulate standards by which our civilization can live. The eternal principles of righteousness, of course, do not change; but these principles must be interpreted again and again in the light of changing conditions. The principle of honesty, for instance, never changes in its requirement that every man be accorded his right; but in this age of complex business relationships it means more than merely that a man shall not commit larceny. It means that financial affairs shall be soundly administered, that the profits of industry shall be fairly distributed, and that international controversies shall be settled on principles of justice rather than by the rule of force. The difference between a civilized and a barbarous people, as Ortega the great philosopher of Spain has pointed out in his recent book, is that civilized people live by standards whereas barbarous people do not. And the preserving of our civilization depends upon the embodiment of the age old principles of right living in standards by which men may live in this modern world.

The formulation of these standards is the work of the lawyer. Of the three learned professions, says Ruskin, it pertains to the minister to teach, to the physician to heal and to the lawyer to give peace and order to society. And we must remember that society is not a mere aggregation of individuals. It is an organism. The law is the life principle of that organism; and the chief function of the lawyer is to interpret that life principle in terms of laws and institutions which will meet the changing needs of the times. The performance of this duty presupposes the exercise of public leadership by the legal profession; and the exercise of such leadership depends, not merely upon the inherent ability of its members, but also upon the confidence of the public in their character and integrity.

From the earliest days of the republic the profession has enjoyed the confidence and has exercised the leadership to which I have referred. The lawyer has been the guide, philosopher and friend of his clients as well as their legal adviser; and to him they have looked for guidance and direction in public affairs as well as for advice in private matters. It was the lawyers who wrote the Declaration of Independence. It was the lawyers who formulated the Constitution of the United States. It was the lawyers who set up our governmental structure and inaugurated the foreign and domestic policies under which the nation has grown to greatness. And, notwithstanding the widespread criticism of the profession today, it is still the lawyers who, not only upon the bench and at the bar, but also in legislative and executive positions are carrying on our government, national, state and local, and are formulating the policies upon which the life of the people goes forward.

It must be apparent even to the least observant, however, that the profession has in recent years suffered much in public esteem and has lost greatly in its ability to guide and direct public sentiment; and the cause of this, I think, is the tendency toward commercialization and the loss by many members of the profession of the professional point of view. This point of view is simply that the profession of the law exists for public service, that the lawyer is an officer of the courts of justice, and that professional success consists, not in the accumulation of wealth, but in the worthy performance of duty in the pursuit of the noble ends for which the profession exists. The usefulness of the profession then, its restoration to full public esteem and confidence and its ability to exercise the leadership demanded of it in this important period of transition, depends upon the regaining of this point of view by the bar as a whole,

upon instilling it in those who are entering the practice, upon driving from the fold those who do not live up to its requirements, and upon impressing on the public the purpose for which the profession exists and our intention to see that its members fulfill that purpose. Needless to say, this last objective must be attained, not by pious declaration of noble principles, but by acts which will demonstrate the seriousness of our intentions.

The importance of the problem which confronts us cannot, I think, be overstated. While the overwhelming majority of lawyers are honorable and high minded men, a few have obtained license to practice who would be a disgrace to any profession; and the activities of these have brought disrepute and disgrace, not only to themselves, but also to their professional brethren, and have caused the profession to lose in the minds of many persons the prestige and standing to which it is justly entitled. The lawyer criminal, who counsels and advises in the commission of crime and uses his knowledge of legal process to protect the enemies of society from the avenging hand of the law, has led many to think that the object of lawyers is not to uphold but to thwart and defy the law. Lawyers of the vulture type, the ambulance chaser and the police court racketeer, have presented the lawyer in the role of a mere parasite, preying none too honestly upon the miseries and misfortunes of his fellows. And last, but not least, the unlawful practice of law by corporations has given rise to a new form of solicitation of business, has tended to commercialize the practice and degrade it into a mere skilled trade and has endangered that great bulwark of professional strength, the relationship of trust and confidence which exists between attorney and client.

I shall not in this presence dilate upon the importance of the canons of ethics, the violation of which has given rise to the ambulance chaser, the practice broker and the lawyer criminal. Nor shall I dwell at length upon the extent of the evils which have arisen. The wayfaring man, though a fool, knows that they exist, and it takes no profound knowledge of human nature or of public affairs to appreciate the harm which they do. I shall devote my attention rather to a consideration of what must be done by the patriotic and high-minded members of the profession to purge it of these evils and to relieve the public of the dangers which they entail.

In the first place, it is our duty to rid the country of the lawyer criminal. It is idle to blame his existence upon corrupt political conditions or to attempt to minimize the evil which exists by showing that lawyers of the criminal type are few in number compared with the honorable members of the profession. All of us know, and experience has demonstrated, that the lawyer criminal simply cannot exist in the face of a determined effort on the part of bench and bar to be rid of him. And to summon the bench and bar to this determined effort, is the first duty of this association and of state and local bar associations throughout the country. We must have determined criminal prosecutions where lawyers have aided in the commission of crime, have shared in its fruits or have assisted in the escape of criminals. We must have prosecutions for contempt where the processes of justice have been interfered with. And we must drive from the portals of the profession those who have prostituted their positions as officers of the court to ignoble purposes. Judges and prosecuting attorneys must realize that they are responsible for seeing that the law is enforced against officers of their courts who are guilty of violations of law which come to their attention; and the members of the bar must accept responsibility for punishing and expelling members of their fraternity who violate the law which it is their supreme duty as lawyers to uphold. The duty of dealing with this malefactor is not a pleasant one; but it is not one of particular difficulty, once it is faced by the whole profession in a determined and uncompromising spirit, and not left to the unaided efforts of prosecuting attorneys and committees on professional ethics.

And in this connection, I think that the spirit of the times demands a recasting of our concept of the duty of the lawyer with respect to the defense of criminal cases. The English idea is that, as the lawyer is an advocate and not a judge, he is ethically bound to accept the defense of any cause in which his services are sought. In America, he is allowed a choice in the cases which he accepts. But here as in England he may properly accept any case presented to him, and, in the opinion of many persons, may present his client's cause to the court without regard to his private opinion as to the guilt or innocence of the man he represents. I am not suggesting a change in the canons of ethics with respect to this. Certain it is that a man charged with crime is entitled to the advice and assistance of counsel to the end that he have his rights under the law, whether he be innocent or whether he be guilty. I am suggesting, however, the importance of high ethical standards on the part of the bar in the discharge of this duty. The highest standard of conduct demands that no lawyer shall present to court or jury any proposition of law or fact which he knows or believes to be false; and I think it is true of the leading members of the profession that they will not throw the weight of their personal and professional standing behind a cause which they believe to be wrong, i.e. that they will not ask a court or jury to do what, with their knowledge of the case, they would not be willing to do themselves.

Unfortunately, however, this is not the universal attitude; and no small part of the popular criticism of the profession is due to the belief that in criminal cases it is the practice of lawyers to use their knowledge of law to defeat rather than to promote justice. Is it too much to ask that, without impairing the right of an accused to faithful and whole-hearted representation by counsel, we insist that, whatever a lawyer's view of the guilt or innocence of his client, he shall not use his knowledge of the law or his position as an officer of the court to hinder or delay the administration of justice, that he shall not use the weight of his personal influence for the acquittal of a man whom he knows or believes to be guilty, and that he shall abstain from using criminal trials for purposes of personal publicity and advertising? Nay more, in the administration of the criminal law, which effects so vitally the security of the public, should not the conscience of the profession demand that the advocate decline to take a position in court which he knows or believes to be false in fact or

unsound in law? Honesty demands nothing less; and an honorable profession cannot afford to condone any trifling in a matter of honor. A law suit is not a form of private warfare in which the combatants are enlisted for the course of the war; it is an inquiry, for the purpose of ascertaining truth, conducted by officers of courts of justice. If these officers find that the representation of their client requires them to present what they think is not the truth, they should decline the cause rather than compromise their integrity. While this is true with respect to all litigation, it applies with peculiar force to lawyers representing men accused of violating the laws of their country. A good lawyer ought to be a good man; and no good man should seek to defeat justice merely because his client will benefit thereby. I know, of course, that it is not possible to attain the end which I have indicated by amending or enforcing canons of ethics. It will be attained, however, when the lawyer who cheats justice is regarded, not as a smart fellow worthy of emulation, but with the scorn and contumely which a cheat and a rascal deserves, however smart he may be.

Next in importance to ridding the profession of the lawyer criminal and revamping our ideas with respect to the duty of counsel in criminal cases, is the problem of ridding ourselves of the lawyer who solicits business and of the unauthorized practice of law by corporations. I speak of these two evils together because they arise from the same fundamental cause, the conception of the law as a money getting business rather than as a profession dedicated to the public service. While they do not constitute the outstanding menace to society that is presented by the lawyer criminal, their effect in bringing the profession into disrepute and disfavor is almost as great. The harm that they do is not so much that they take legal business from the honorable and able members of the profession to whom it would otherwise legitimately come, as that they degrade the practice of the law into a graft or racket and destroy the respect and confidence of the community in the profession as a whole.

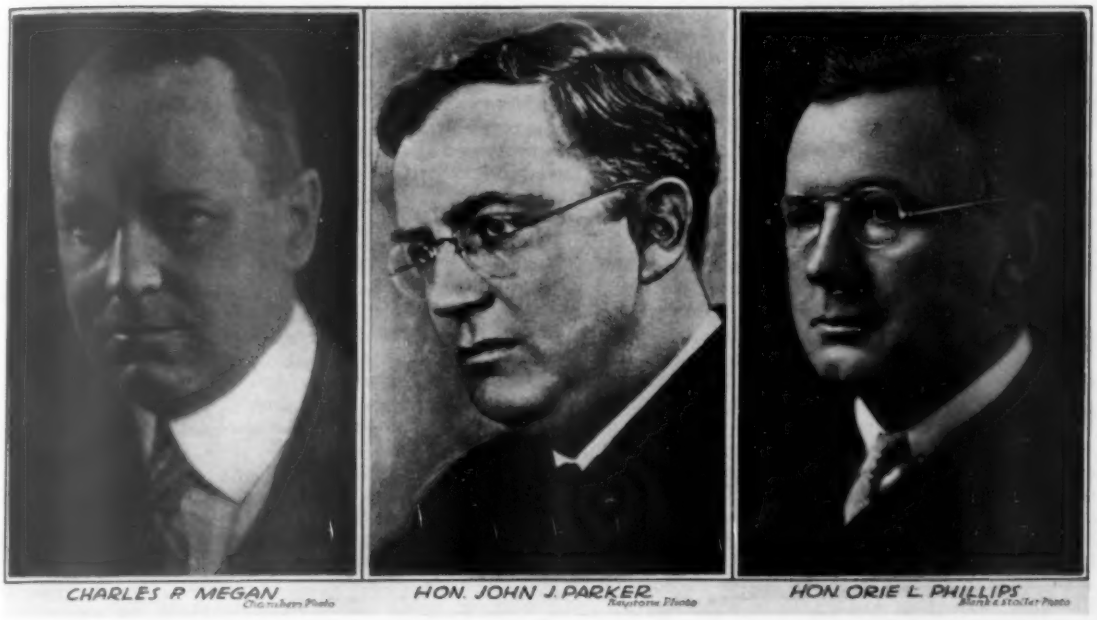
How to deal with these evils, is a most troublesome problem and one which can be solved only by the united and determined action of the bar; but that it can be solved by such united and determined action has been demonstrated by recent experience in dealing with the ambulance chasing racket in New York, Philadelphia and other cities. The trouble is that what is everybody's business is nobody's business until someone makes it his business; and there are few individuals in whom the urge of public duty is so strong that they are willing to incur single handed the hostility of the powerful forces that fatten on unprofessional practices. The temptation is to draw around one's self the cloak of professional rectitude and pass by on the other side, leaving the shyster and his victims alone. The time has come, however, when the bar can no longer indulge this attitude if it is to preserve its standing in the eyes of the public. The honorable members of the profession cannot escape the disgrace which, in the public mind, is brought upon the whole bar by the conduct of its unworthy members. If lawyers expect to retain public respect and confidence, they must purge their profession of the shyster as well as of the criminal, and must blot out the commercializing influences which would reduce it to the status of a mere skilled trade.

The accomplishment of these reforms calls for a definite program on the part of the bar of the entire United States, pursued without intermission for the attainment of definite objectives. In the first place, there must be, as I have indicated, a definite and determined effort by every bar association, national, state and local, to eliminate the criminal and the shyster from the ranks of the profession. The organization of the entire bar for the purposes of self government, which has been tried with success in a number of states, is an effective means to this end; but the campaign cannot await this process of organization. It must be pressed forward with such organizations as we now have, which are amply sufficient for the purpose, if they be given the support of every patriotic and upright lawyer in their efforts.

The campaign for the purging of the bar of undesirable members must be supplemented by efforts along the line of legal education and restriction of admissions to the bar to the end that only such men shall be admitted to practice hereafter as are fitted by character and education to perform the duties and uphold the ideals of the profession. A good many persons, some of them lawyers, have the idea that the raising of the standards of legal education are designed for the purpose of limiting competition. Such a purpose, I think, does not enter the minds of those who have the subject most at heart. It is realized that while education cannot of itself inculcate character, it is not only conducive to greater efficiency in the discharge of professional duties but also tends to the development of a higher type of practitioner.

In this connection, I wish to give my indorsement to the proposal that, in the required pre-professional course, greater attention be given to the teaching of professional ethics. How this subject shall be taught, is, of course, a matter for the law schools; but I am impressed with the thought that the mere study of the code and the treatises of Warvelle and Sharswood is not sufficient. The student, as has been pointed out by Dean Wigmore, should be required to complete a broad course in jurisprudence as well as to study the case books. He should be made familiar with Campbell's "Lives of the Lord Chancellors" and "Lives of the Lord Chief Justices" and with Lewis's "Great American Lawyers." He should be taught something of the organization and work and purposes of the bar associations of his city, his state and his country. In other words, he should be given a view of the profession in its relation to the public welfare and the course of history, so that he will enter it with professional pride as an honorable avenue to public service, and not as a mere means of livelihood.

And I think that the Pennsylvania experiment with the proctor system is worthy of adoption in every state of the Union. Let every young man as he enters the profession, be placed for a year or more for instruction and guidance under the tutelage of some established member of the bar, who shall have him under supervision and be charged with the duty of guiding and counseling him in



CHARLES P. MEGAN HON. JOHN J. PARKER HON. ORIE L. PHILLIPS

personal and professional matters. In this way the bar will throw around the young practitioner something of the spirit and comradery of the English Inns of Court; and we shall be able to restore some measure of that priceless personal contact between the student and the practitioner, which was lost when instruction in the schools supplanted instruction in the office. It is not difficult to imagine what such a system will mean to the young man taking his first trembling steps in the pathway of professional achievement. It will mean as much or more, in personal satisfaction and professional pride, to the older practitioner, who is given this opportunity of extending a helping hand to a younger brother starting out along the road which he has traveled with success. And, above all, it will mean to the profession and to the country that the high ethical concepts and ideals of each generation of lawyers will be passed on in practical fashion to those who are to come after them.

In one other field there is great need, I think, for the formulation and enforcement of proper standards of professional ethics. I refer to the trial of causes fraught with popular interest. Few things so shake the confidence of the people in the processes of justice as the bullying, the ranting, and the ballyhoo with which such trials are frequently conducted. Trial by battle is supposed to have passed out of use some centuries ago; but this is trial by battle in a new form, in which champions of the opposing parties strive for victory with every weapon of the charlatan and the demagogue. In some jurisdictions, the judge, by legislative curtailment of powers of the judiciary, has been reduced to the status of a mere presiding officer, and for days on days the battle rages to the amusement of bystanders, the profit of the sensational press and the humiliation of everyone who has any pride in the institutions of his country. Let me suggest that the time has come for the legislative branch of government to restore to the judge the power which he had at common law to direct and control the course of trials, and for the profession to insist that trials be conducted as sober attempts to ascertain truth and not as public spectacles. In pioneer times the sporting theory of justice, as some one has called it, might be condoned; but it has no place in the courts of today.

No address on enforcement of legal ethics would deal adequately with the subject if it should fail to stress the importance of preserving, by every means possible, the professional as distinguished from the commercial ideal. The difference between a business and a profession is this: the chief end of business is personal gain; the chief end of a profession is public service. The function of the lawyer—his reason for existence—is not to make money or to acquire reputation for learning, but, as I have said, to give peace and order to society—to see that "wisdom and the will of God" prevail in the affairs of men. And because there is a deep realization on the part of the public that this should be the lawyer's true function, I suspect that the miserable lawyer criminal or the pitiable shyster has less to do with the loss of public confidence in the profession than the well to do and respectable members of the bar who have degraded their exalted calling into a mere money making trade—the gentlemen who live within the law and within the strict requirements of the code of ethics but who recognize no obligation of public service and no responsibility for upholding the ideals of the profession. Such men are but money changers in the temple of justice; and their mercenary attitude has done much to destroy the confidence of the people in those upon whose ministrations the process of justice depends. We must come to the understanding that the lawyer who has merely discharged his duty to his client has not discharged the full duty that he owes—that duty to clients can never be placed above duty to the law and to one's country—and that no man

can be considered a great lawyer, no matter how large or distinguished his clientele, how great his wealth, or how profound his learning, who fails to discharge the public duty which he owes as a member of the profession.

And this public duty, I think, is not merely the negative one of not commercializing the profession. It is the positive one of leadership in public thought and affairs. I do not mean to say that it is the duty of the lawyer in every case to aspire to public office. I do say that it is his duty to give thought to public problems and to take an active part in the direction of that informed public opinion which is the real ruling force of the nation. There is no other citizen who can perform this duty so well as he. The merchant has too direct and personal an interest in business problems. The doctor is too much engrossed in the scientific problems of medicine. The minister and the college professor lack, in most cases, sufficient experience in practical affairs. The lawyer, on the other hand, has given his life to the study of law and government rather than the problem of science, as have men in other professions. He knows business in its details as well as the business man, and he knows it in its larger aspects as the business man does not know it. He is removed, moreover, from the direct personal interest in business problems which the business man has and the pressure and temptation resulting therefrom to take a position looking to the immediate welfare of his business rather than one based on sound principles of public policy. The practice of his profession keeps him in constant contact with the problems of state and nation; and he alone of his fellow citizens possesses the wealth of specialized knowledge, the practical grasp of detail and the detachment from the processes of business, which are essential to deal with these problems effectively. It is regrettable that we so often find able and upright members of the bar refusing to concern themselves with problems upon which the future not alone of their communities but of their states and the nation depend, and leaving these problems to be solved by men who have neither the character nor the ability to solve them. Without intelligent leadership a democracy cannot live; and those members of the profession who consider themselves too busy to take a part in public affairs should ponder the saying: "Who saves his country saves himself, saves all things, and all things saved do bless him. Who lets his country die, lets all things die, dies himself ignobly and all things dying curse him."

Before I conclude, let me make clear again that, in my opinion, the evils which I have pointed out from which the profession is suffering arise from the misdoings of an insignificant portion of its membership. Lawyers as a class are high-minded, honorable men who would scorn to violate either the letter or the spirit of the code of ethics or the unwritten traditions which prescribe the conduct of a gentleman of honor. I have indicated what I conceive to be the duty of the profession with respect to certain evils and abuses on the part of a few. Let me add that I think it equally our duty to repel the unwarranted attacks upon the profession as a whole made by the ignorant or the unthinking. The shyster and the criminal must be eliminated and improper practices and commercialization must be rooted out; but we must not permit a noble profession, whose purpose is nothing less than the achievement of justice and order and whose members, with the exception of the few I have mentioned, are patriotic and honorable men, to be degraded in the public mind by attacks based upon misinformation and misunderstanding which ascribe the conduct of these few to the profession as a whole.

I close as I began. The future of our country depends upon the leadership of the bar. The leadership of the bar depends upon the confidence of the people in the profession; and the profession will have that confidence only if the profession deserves it. To deserve it, we must clean house. We must drive from the profession those who abuse its privileges; and we must set up and enforce standards which will make membership therein a guaranty of probity and a recognized dedication to the public service.

Let me end by quoting the memorable words of Mr. Justice Harlan on the occasion of the retirement of Mr. Justice Brown from the Supreme Court of the United States. He said:

"Your profession, Gentlemen of the Bar, is a most noble one. None is more so, unless we except that of the Ministry of the Gospel. But the opportunities which even that exalted profession has for good in its wide sphere of action are no greater than those which the bar enjoys in its particular sphere of action. Gladstone said that the members of the English Bar were inseparable from English national life and from the security of English institutions. We may, with absolute truth, say the same thing in respect of the relations that American lawyers hold to our national life and institutions. * * * Whether the gloomy forebodings of the pessimist will soon be verified, whether lawlessness and a failure to enforce the law is long to continue in our own country; whether public and business life is to become for many years affected by corruption, will depend, Gentlemen of the Bar, very largely upon the members of your profession. If the lawyers stand, as one man, firmly and courageously for law and order, for equal and exact justice, for the rights of all as established by law, and for cleanliness in public and business life, the people will heed their counsel, and follow the ways of right and truth and justice worked out by them."

Signed Articles

As one object of the American Bar Association Journal is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this Journal assume no responsibility for the opinions in signed articles, except to the extent of expressing the view by the fact of publication, that the subject treated is one which merits attention.

Grievance Committee Work in Chicago . . .

. . BY CHARLES P. MEGAN
President of Illinois State Bar Association

I AM glad to talk about *procedure* in grievance committee work. Procedure is important. Some continental constitutions have an exhortatory clause, asserting the right of personal liberty of the citizen, but the English and American writ of habeas corpus—a simple piece of machinery—is more effective than many words.

We must first consider the doctrine that when you catch a crook you ought to make short work of him. In disbarment cases, as in criminal law, we cannot devise one method of trying innocent men and another method of trying guilty men. We have no wish to be arbitrary, or disregard due process of law, in the discipline of lawyers and our supreme court would not let us if we would. We must not abandon the principle, established painfully by lawyers through the centuries, that Justice according to law is superior to Justice without law, although the latter has always had a great attraction for the unthinking.

The procedure in Chicago may be outlined in connection with a few statistics:

1. Every day a number of people come to the rooms of The Chicago Bar Association with complaints which are seen at once to be not well founded, or else outside our jurisdiction. (We do not give legal advice, review court decisions, collect money, or adjust fees, except under quite unusual circumstances). These complaints are not reduced to writing, but are disposed of on the first interview without further action. They total per year about 800, including the repeat calls.

2. In addition, a large number of complaints, sent in by letter, are disposed of by written reply, without further action, on the same grounds as in the class of cases just mentioned. This second class totals per year about 600.

3. In the eight months' period from September, 1934, to May, 1935, we received 579 complaints which on first examination seemed to call for further attention. In each of these cases a copy of the complaint is sent to the lawyer complained of, with a request for a reply. When the answer comes in, the file is sent to one of the members of the grievance committee. The committee consists of seventeen members. It sits in six sections—two meeting in the evening and four in the afternoon. Each section meets once a week. The Chairman sits with all the sections. The parties are not present. The case is talked over. In 264 of the 579 cases the order was, "not further entertained."

(a) The remaining 315 cases were set for hearing, with complainant, respondent, and witnesses present. At the hearing, 107 of the 315 cases were ordered "dismissed," and 26 "placed on file." The order "dismissed" finally disposed of the matter; the order "placed on file" means that the case may be considered again in connection with a new complaint. This leaves 182 cases to be accounted for.

(b) Of these 182 cases, 3 were referred to the committee on professional ethics, 3 to the committee on unauthorized practice of the law, and 101 to the Commissioners of the Supreme Court of Illinois. The remaining 75 cases were at various stages, not yet disposed of, at the end of the period mentioned (about May 1, 1935).

4. It is not my intention to repeat the information given for Illinois in the booklet "Disciplinary Proceedings", just published by the American Bar Association, except to say that on April 21, 1933, the Supreme Court entered a rule making the grievance committees and the governing boards of the Illinois State Bar Association and The Chicago Bar Association Commissioners of the Court with power to subpoena witnesses and take testimony under oath. I have referred to 101 cases which, after all the preliminary sifting processes above outlined, are regarded as calling for a hearing before the Commissioners. The figures given are for an eight or nine months' period. More complete figures for the eleven months' period ending May 6, 1935, show 119 cases referred to the Commissioners, with 59 carried over from the preceding year, a total of 178 to be accounted for. These 178 cases were disposed of as follows (in all cases after a full hearing upon oath):

Dismissed, 45; Placed on file, 23; Reports voted, 32; Reports filed, 3; Disbarred on own motion, 2; total disposed of, 105; Number pending, 73; Total 178.

We think that a sworn complaint should not be insisted on. Sometimes a lawyer will convert his client's money, and make restitution after a long delay when disbarment is close at hand. The complainant is no longer interested, of course, but the profession is. No doubt restitution is an important element, but it should not be conclusive. We sometimes compel a complainant to come in, under subpoena.

If the complaining witness has no lawyer, we assign one, from a volunteer list. This lawyer is not a prosecutor, but an aid to the Commissioners in getting the complainant's case fairly and adequately presented. His business is not to secure a conviction but to get at the truth. We also advise the respondent to be represented by counsel, and we assign counsel to the respondent if he can not afford to pay a fee. Thus the Commissioners sit as judges, aided by counsel—the time-honored and (the bar has always maintained) the best way of bringing out the facts fully and fairly.

There was an obvious defect in our plan. A judge cannot go out on the street and apprehend people and bring them before him for trial. Who is to do the active work of getting unworthy lawyers before the bar of the Court? We have decided to have our committee on inquiry do this, and also make the preliminary investigations now carried on by the grievance committee. This will leave the Commissioners free for purely judicial work. It will also make the situation easier for the lawyer who is unjustly accused (this proves to be true in the majority of cases.) a lawyer resents being

called before a body called a grievance committee, when he might think it different if he responded to a call from a committee on inquiry. On probable cause shown, or a situation where testimony under oath appeared to be necessary for the bringing out of the facts, the committee will transfer the case to the Commissioners, as the grievance committee now does.

On details of procedure—should we consider ourselves bound by the strict rules of evidence, or are we free to adopt a more informal set of rules? May we call the respondent as a witness? Judge Cardozo held that a lawyer is bound to aid inquiries into professional conduct; we think the respondent may be asked to clear up obscure points, but that we should not allow a complaining witness to make out a case in chief upon the respondent's testimony. If an adverse report is voted by a section, a copy is sent to the respondent, and he may file objections. The section considers these, and the report as confirmed or amended may be argued by the respondent before the full committee, again before the Board of Managers (sitting as Commissioners) and finally in the Supreme Court. This seems cumbersome, but which step may we omit without violating due process of law?

Two problems that seem to be new are the alleged (really forced) loan from a client and reinstatement. It should be hard to disbar, and harder still for a disbarred lawyer to be restored. It seems to us that we should not be in a worse position than if the disbarred lawyer were applying for admission in another State; in which case the local committee on character and fitness would consider, not merely the conduct of the lawyer since disbarment, but the circumstances of the disbarment.

I wish that grievance committees might have the benefit of exchanging problems and solutions. Perhaps The Bar Examiner might serve as a clearing house.

Time is our great problem, as with the courts. The respondent is on trial for his life, and he may be sick or impoverished, and in need of time for preparation. We cannot crowd him too hard, but we are restive under the long and numerous delays.

We should like to exercise a more *positive* influence on the practice of the law. Most of our work is negative, though necessary, scavenger work. A lawyer is convicted and sent to a federal penitentiary, and we then disbar him. This is proper, but we are contributing little; we are simply registering a decision already made by others. Or a lawyer goes down-hill, has to give up his office, leaves his home, disappears, with clients' money unaccounted for. When we disbar him, we have really accomplished almost nothing. However, the New York courts not long ago disciplined a young lawyer simply for sharp practice —the unconscientious exercise of legal rights. This lawyer had a client whose funds, amounting to $900, in a bank, had been attached. The lawyer served notice of a motion to vacate the order of attachment, by pushing a copy under the door of the office of the other lawyer at eight o'clock on Saturday night. This complied with the three days rule for a motion on Tuesday. Monday was a very strict religious holiday (binding on both lawyers,) and the lawyer on whom the notice was thus served did not see it until Tuesday morning. He rushed over to court, but the motion had already been allowed, and by the time he notified the bank the money had been withdrawn. For this the Appellate Division suspended the offending lawyer for three months. This is the sort of disciplinary action that actually affects the practice of law.

In conclusion I would observe that no grievance committee can do much without the steady support of a high-minded bar. A keener sense of professional obligation will lead the bar to expect, to ask for, to demand higher ethical standards, and grievance committees everywhere will respond.

Making Disciplinary Procedure More Effective

. . *BY HON. ORIE L. PHILLIPS*

Judge of U. S. Circuit Court of Appeals, Tenth Circuit

PROVISION for adequate disciplinary procedure is important from the standpoint of the general public, the legal profession and the individual charged with misconduct.

The public is entitled to protection from the unfit and unethical lawyer; the profession is entitled to have its honor and its public esteem protected from injury by the misconduct of the comparatively few of its members who are unwilling to adhere to the high professional standards to which we subscribe and which we strive to maintain; the lawyer charged with misconduct is entitled to a fair and impartial hearing that will ascertain the truth respecting the charges.

Twenty-seven years of experience at the Bar and on the Bench has convinced me that lawyers as a class are men of integrity, high purpose and good character, and that they adhere to standards of professional conduct that compare favorably with those of any profession in the world, and that those lawyers who besmirch the good name of the profession, bring dishonor upon it and destroy public confidence in it are comparatively few in number.

But because the number of lawyers who are unethical in their conduct is small, it does not follow that the problem they present is unimportant.

We, as lawyers, cannot fulfill the high purposes of our profession, we cannot adequately perform our important functions in the administration of justice, and we cannot furnish that type of courageous, intelligent and effective public leadership of which we, more than any other profession, are

capable, unless we have and maintain the confidence and respect of the public at large.

The problem is not conditioned on what we are, but rather on what the public thinks we are.

Our objective should be the restoration of public confidence in our profession which has suffered much from the unrighteousness of a few.

Again, the mere fact that a lawyer in dealing with a client or a member of the public has been guilty of no wrong does not mean that his conduct presents no professional problem. The person with whom he has dealt may honestly but mistakenly believe otherwise.

We are, therefore, concerned both with cases of actual misconduct and with cases where a member of the public honestly but mistakingly believes he has been mistreated by a lawyer, because both tend to destroy public confidence in our profession. We must therefore provide agencies where a member of the public actually aggrieved, or who in good faith believes he has been aggrieved, may lodge his complaint and have a prompt, thorough, fair and adequate investigation.

Disciplinary machinery must provide an effective means both to punish the unethical and to vindicate the honest lawyer whose conduct has been unjustly challenged. In the latter case, every possible effort should be made to convince the complainant that the conduct of the lawyer has been proper.

If we are to make disciplinary procedure more effective, two things seem to me to be necessary. The first essential is that the Bar itself be aroused to its duties and responsibilities to uphold the honor of the profession, to insist that its high standards of ethical conduct are adhered to, and to see that those who fail to measure up are disciplined and that those who are unworthy are expelled from its ranks.

I think this objective has been accomplished. The members of the Bar are courageously facing these problems and giving unstintedly of their time and their energies, in an effort to solve them, where adequate machinery is available for disciplinary action.

The second essential is such disciplinary machinery.

Investigating agencies must be provided that are open and available to every person who has an honest complaint, that will afford the complainant and the accused a fair, speedy and adequate hearing, and that will result in the vindication of the innocent and the ascertainment of misconduct by the guilty.

The preliminary investigation of charges should be private and should be conducted with as much secrecy as is compatible with an adequate ascertainment of the facts, because the mere fact that charges have been filed is likely to result in injury to the lawyer complained against. Where, after a hearing, the charges are found to be unwarranted, sufficient publicity should be given to nullify or render innocous the effect of the charges and investigation.

It is, of course, a serious matter to suspend or disbar a lawyer, to deprive him of the benefits of his special training and preparation, to take from him his means of livelihood and deny him the right to practice his chosen profession, and it should only be done after a fair and adequate hearing where he is accorded full opportunity to present his defense and after a competent court has ascertained and adjudged that he has been guilty of misconduct justifying such punishment. But it is also a matter of vital moment and concern to the public and the profession that those who engage in the practice of the law should rigidly adhere to its standards of ethical conduct which are essential to the well-being of society and to the maintenance of the honor of the profession.

In the States which have adopted the integrated plan of Bar organization, adequate disciplinary machinery has been provided.

In general the plan is this: The Board of Governors appoint local administrative committees that may receive complaints, subpoena witnesses, and make investigations. Their proceedings are usually private. Most complaints do not reach the stage of even a private hearing. They are screened out as unwarranted but with the result that the complainant goes away satisfied and with an enhanced respect for the profession. But where the complaint is well founded, the facts are speedily ascertained and reported to the Board of Governors.

The Board may hold a private or a public hearing as the facts require and administer a private or a public reprimand. Where more severe punishments seem to be required, the Board submits its report and recommendation to the Court for review and final hearing and determination.

I strongly favor the integrated Bar organization and believe it should be adopted in all States except those to which it is not adaptable because of peculiar local conditions.

In matters of discipline, the members of integrated bars act in an official rather than a voluntary capacity. This makes the Bar more responsive to its obligations and makes disciplinary machinery more effective.

Like results are being obtained in non-integrated Bar states where committees created by the Bar are given semi-official recognition by order or rule of court.

In this day when tremendous problems, social, economic and political, press for solution, our citizens need the guidance of courageous, intelligent and patriotic leadership. The American Bar and it alone can furnish that leadership. It will be effective only as we have and maintain the confidence and respect of the American people. I know of no better way to secure and maintain that respect and confidence than to drive from our temples of justice and from the ranks of our profession those who are unfit and unworthy to wear the ermine or to don the silk.

ADDRESSES AT CONFERENCE ON "BETTER ORGANIZATION OF THE BAR"

Contents and Purposes of Coordination Committee's Report . .

BY JEFFERSON P. CHANDLER
Chairman of Committee on Coordination of the Bar

I HAVE been requested to present the report of the Committee on Coordination of the Bar, of this Association. This report has been printed in the advance program of this meeting, and also in pamphlet form, copies of which have been widely distributed. I presume that many of you have read the report and I therefore will not deal with it in detail; but I do wish to make a few remarks and observations in regard to its contents and purposes.

The American Bar Association, ever since its formation some fifty-seven years ago, has been an entirely voluntary association composed of members of the Bar throughout the United States, and now has a membership of about 30,000 out of a total membership of the Bar of approximately 175,000.

During its entire history, it has done an enormous amount of most excellent work, but on account of its voluntary character and its limited membership as compared to the entire Bar, it has never really been in a position to speak for the Bar as a whole, and its promulgations have been regarded more as the result of the opinion of some very able lawyers, than as the expression of the Bar as a whole.

Many have realized that it is for the best interests of the lawyers and of the public that there should be an association of lawyers which, by virtue of its membership and representative character, would have authority to speak for the entire profession.

All of the other professions have strong national organizations of a representative character who speak for the entire profession. The lawyers, as a rule, are individualists, and consequently there has not been, in the past, the same sentiment for the creation of a representative national association that has existed in the other professions.

About five years ago, the Committee on Coordination of the Bar was created for the purpose of endeavoring to establish a closer relationship with the Bar Associations of the country, and to make a general study of the subject of the creation of a representative National Bar Association, and to ascertain the best method of accomplishing this purpose. The Committee found that bar associations, both in number and in membership, were rapidly increasing throughout the various states of the Union, and that the profession as a whole was beginning to take more interest in furthering bar association work; and they realized that very little could be done about creating a national association with authority to represent the entire Bar unless and until the lawyers of the country felt a need for it, and had a desire to accomplish it.

FOUR PLANS SUGGESTED

I. Continued emphasis on National Bar Program as a means of obtaining broader interest, larger membership, and more unified action on the part of lawyers, but without undertaking present changes in the structure or functions of the American Bar Association.

II. Improving the structure and organization of the American Bar Association along its present lines and traditional development.

III. Building a much larger and more representative and inclusive membership for the American Bar Association by making the Association of greater service to lawyers in their profession.

IV. Federalization of the American Bar and the creation of a House of Delegates as the governing and policy-determining body.

The Committee has been endeavoring to ascertain the sentiment of the lawyers of the country on this subject and are convinced that it is coming to be realized by the profession that further steps should be taken to bring about a more representative and more inclusive organization of the Bar, with some manner of correlation between the various bar associations, so that the organized Bar can speak and work more effectively for the interests of the profession and the public.

The American Bar Association has repeatedly gone on record in favor of the principle of what has been variously called Bar Coordination, and a more representative and inclusive organization of the lawyers of the United States, under the leadership of the American Bar Association. The Association has likewise committed itself to active efforts to carry that principle to practical fulfillment. Under the authority of the Association, its officers and committees have, for several years, spent a great deal of time, as well as funds of the Association, in furthering that general objective. Outstanding leaders of the American Bar have endorsed and commended the idea, and Association members in many states have worked hard to lay the foundations for tangible results.

Nevertheless, it cannot be said that the movement for Bar coordination has yet taken very definite form, or that it has evolved a definite program or objective, to which members of the Bar can rally or for which they can work.

Not a few members of the Association appear

to have endorsed or acquiesced in the action of the Association, from year to year as to Bar coordination, without having any very definite ideas as to what it means and would involve. Some of them might have been against it if it had been more definite. On the other hand, many members of the Bar, and many organizations of the Bar in states and localities, would be glad and able to do something to advance the idea, if they knew what to do and what was desired. They look to the American Bar Association, as they should, to define the objectives, develop and declare the specific program, and take the leadership.

In the meantime, the American Bar Association felt that they should endeavor to create a unison of work, and they therefore established what is known as the "National Bar Program." This consisted of selecting four or five vital subjects of interest to the profession, and requesting that the bar associations of the country devote their attention to these subjects at the same time, in order to procure a National expression of opinion on these subjects, and so that the work of one bar association might be of use to another.

It was believed that if the American Bar Association furnished to lawyers throughout the United States a common program in the interests of the public and the profession, and if the Association to some extent marshalled the opinion of the profession and supplied a common leadership, the members of the profession would wish that sort of coordination of efforts to be made more effective.

The results of the work for the National Bar Program are well known to the members of the Association and have been appropriately reviewed and appraised by others. We believe that the National Bar Program has added greatly to the prestige and leadership of the American Bar Association, and has demonstrated to the lawyers of America that further progress can and will soon be made, in the direction of an American Bar that is better organized and qualified to speak and act for the legal profession.

Survey of what has thus far taken place as to the National Bar program leaves no room for doubt that it has been remarkably successful in bringing an increased number of lawyers and bar associations into a realization of a common interest with the organized Bar. Over a thousand committees of state and local bar associations are enlisted, and are cooperating with the American Bar Association, in behalf of the National Bar Program or specific items thereof. These committees have a total of more than 5,000 members. A great deal has been accomplished, more than in any previous year, in making effective the recommendations of the organized Bar, on matters embraced within the National Bar Program. The favorable action of Governors, Legislatures, Judicial Councils, Courts, and other public officials, has been brought about, in varying degrees, in not a few states. There has been and is almost everywhere, a greatly increased manifestation of interest on the part of the lawyers, in the idea of a better coordinated, more representative, and more inclusive organization of the Bar that will be in a position to render a greater service to the profession and the public. Although the traditional indifference of many lawyers to the American Bar Association, and their doubt as to its real usefulness to the profession and its right to speak for the profession, have not been removed, it can surely be said that gratifying, almost surprising, progress has been and is being made in preparing the situation for definite forward steps under the leadership of the American Bar Association.

The National Bar Program is not, and was not intended to be a substitute for actual national organization. It has been watched and commented upon favorably by the press and is slowly but surely awakening the generality of the bar to the advantages and possibilities inherent in a truly representative national organization, and in the value of increased service such as it alone can provide.

The Carnegie Foundation became greatly interested in the effort to create a strong national bar association, and upon the adoption by the Executive Committee of a resolution declaring its purpose to continue the work of coordination of the Bar, for a period of three years, the Carnegie Foundation made a grant of $50,000 to aid in this purpose.

This money was to be used over a period of three years, and an equal amount was to be appropriated by the American Bar Association.

By virtue of the money so furnished, this Committee has been able to communicate frequently with the Bar Associations of the United States, and to create an interest in the particular subjects of the American Bar Association program, and also on the subject of creating a stronger national bar association.

It is now possible to look forward to two more years of adequate financed effort, but it is also necessary at this time to endeavor to reach definite and constructive decisions as to the many pressing problems of organization which must be determined before the funds are exhausted and in order to discharge the moral obligation implied by the acceptance of the grant.

At the time of the grant, the Carnegie Foundation desired to accomplish these purposes:

> The Carnegie grant was given to enable results to be accomplished by way of a better and more inclusive and hence more representative and effective organization of the Bar, an association that can speak and act for the Bar as a whole; and it was not given to further any particular propaganda or point of view on the part of the Bar Association, either as to matters pertaining chiefly to the profession or as to subjects of general public interest;
>
> The Carnegie Foundation did not give its money to finance the furtherance of the National Bar Program as an end itself or except as the unifying effects of the National Bar Program may aid and advance the idea and plan of Bar Coordination;
>
> The Carnegie Foundation is not interested in financing the improvement of the political structure or organization of the American Bar Association, merely for the sake of such improvement, or in bringing about improvement of the American Bar Association, merely in terms of the Association itself.

The development in the United States of a bar organization that will be inclusive and representative, that will render indispensable service to a greatly increased membership and enlist the cooperation of such a membership, and that thereby will be, and will be recognized as, entitled to speak a reasoned and authoritative opinion for the Bar as a whole, is an objective which an institution such as the Carnegie Foundation could soundly decide to assist, as greatly in the public interest.

Heretofore, there has been chiefly only hazy

adherence to the general ideal of a profession well organized nationally. The time has now come for the adoption of a definite principle and a willingness to accept all structural changes which it may imply. The time has not yet arrived for the definition of a precise plan, but the time will arrive for the formulation of such a plan as soon as the principles it is to carry out have been agreed upon. To this end, the Executive Committee has called this conference of representatives of other associations and of our members to consider the whole subject.

Those who have been engaged in these tasks, in their respective states, are now asking: "What is to be done next?" No one has been in position to give an answer with authority and certainty; and there seems to be a danger that the present energy and enthusiasm for a better bar organization, as well as the confidence and support of many outstanding lawyers who have given the idea their public endorsement, will be dissipated and lost, unless a program can now be brought forward, with the backing of leaders whose endorsement will command wide-spread support.

All of these conditions, and particularly the acceptance and expenditure of moneys of the Carnegie grant for a three-year period, appear to place upon the Association and its leaders a very definite and immediate responsibility for clarifying the situation, seeing if a program can be developed that will be backed by a consensus of opinion and leadership, and then getting into action in behalf of the necessary steps to accomplish results.

It seems warranted to say that, as a matter of good faith as well as good sense, the coordination idea should be reduced to a definite program, and the loose ends of its support in the profession tied together, or the whole idea should be decisively and promptly put aside and abandoned, for at least the present, to the end that the energies and funds of the Association, and of the Bar generally, may be devoted to work that promises tangible results. Certainly, unless the leaders of the Bar are ready and able to formulate and sponsor such a definite program, that is adequate and comprehensive in scope, the Association should not continue to accept and use funds from the Carnegie Foundation.

Although there are many evidences of an increasing discussion of Bar Coordination, we do not believe that it can be deemed that this sentiment or opinion in the profession has yet crystallized in behalf of definite steps or plans, or that it has yet been placed before the American Bar Association with the active support and understanding of a sufficient proportion of the membership of the organized Bar. Under those circumstances, although we believe that the American Bar Association should be receptive and sympathetic as to plans for the better correlation of its work with that of the state and local bar associations, it clearly would be premature to make, at this time, structural changes in the American Bar Association, before the opinion of the profession in the various states has taken more definite form. In the nature of things, the precise plan and scope of Bar Coordination should not and could not be determined and limited at this time, by generalizations formulated by committees or individuals. That definition and determination must come from the Bar itself, over a period of time, under wise and active leadership, by the American Bar Association.

As long as the great disparity exists between the total number of lawyers, the total number of members of the American Bar Association, and the total number of members of any bar association, room is left for doubt whether the American Bar Association renders an indispensable service to its members. To those who are concerned that reasoned, informed opinion in this country shall be expressed with an authoritative voice, the development of a program for much more inclusive and representative Bar is a task of prime public importance.

In the consideration and development of specific proposals on the subject of Bar Coordination, we believe that the legal profession will best proceed along lines consistent with its own tradition and needs, rather than by trying to adopt or adapt any plan in use by any other profession. The American Bar Association has come through the depression conditions with marked success as to membership, finances and steadily increasing interest and usefulness. The organization and usefulness of the American Bar can and will be further improved; but progress must not depend upon casting aside the great advance that has been made. The legal profession may best go ahead along its own lines, and "by trial and error" make steady improvement in its own organization, membership and procedure.

At the present time, the effective furtherance of the objectives for which your committee was created and has been continued would seem to require:

That the active consideration of practicable ways of bringing about a more representative and effective organization of the Bar of the United States be carried forward by state and local bar associations as well as by individual members of the Bar, to the end that a consensus as to plan and method be reached by the state and local bar associations, as soon as practicable;

That, in any event, the views of the membership of each state and local bar association on this subject ought to be ascertained and reported, as soon as practicable, to the end that the opinion and wishes of the Bar of the whole country may be a militant and decisive factor in the present and future consideration of the subject.

It need hardly be reiterated that the more representative organization of the Bar of the nation is not a project which the American Bar Association would or could impose upon indifferent or inactive associations in the states or localities.

It is important for the Association to adopt a policy before it adopts a definite plan for coordination, and the report of the Coordination Committee is designed to set forth various arguments on the subject and to assist in the adoption of a policy by this Association, and later of a plan. The considerations set forth in the report clearly demonstrate the advisability of considering, First, whether in the interest of coordination activities, some formal or structural tie-in of the various associations with the American Bar Association, with or without a plan of representation is necessary or advisable; or, second, whether the objectives can be sufficiently accomplished without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any structural changes in the American Bar Association through increasing the effectiveness of the American Bar Association leadership in gathering together and assisting the activities of the state and local bar associations.

The report sets forth four proposed plans, which plans are not alternative plans, and are not necessarily exclusive of each other, but which contain the features which might possibly be used in any plan to be adopted, and it is hoped that the statements and discussions which are made at this meeting may aid in determining the policy which should be pursued by the American Bar Association in the solution of these questions.

The Time Has Come for Action . . .

. . . BY WALTER P. ARMSTRONG

Member of Memphis, Tenn., Bar

MR. CHAIRMAN, and Fellow-Members of the American Bar Association: In speaking to this subject this afternoon I rather feel that originally I was in the position of a devil's advocate, because when this Committee first began to function, while I was on the Executive Committee, and later Chairman of the Budget Committee, I was of the opinion that the Committee was very much inclined to over-emphasize the importance of its work. I certainly felt that it was very generous in its ideas about the amount of money to be expended.

But latterly, perhaps because I have begun to look at the matter from a detached point of view, I have concluded that this coordination work is the most important work at this time before the American Bar Association. I say "at this time," by reason of the fact that the groundwork has been laid by the National Bar Program. The Committee has not only done a great deal of work, but spent a great deal of money, and I am Scotch enough to feel that we ought to capitalize on that expenditure now instead of letting the force of the movement be spent and have to spend the money and do the work over again.

The reason why I believe that the work of this Committee and this coordination work is the most important thing before this Association is this: I think that the American lawyer is losing his leadership in American life, and unless some body is constituted that can speak for the American Bar with an authentic voice, that leadership will not be regained.

I have no sympathy and little patience with those who carp and criticize lawyers, whether flippantly or seriously. We are not a bunch of chiselers and we are not a mob of racketeers. I except no profession when I say that the lawyer brings to the practice of his profession, if he is to succeed at it, more intelligence, more industry, more education, and more character than is requisite in any other profession. Notwithstanding that, it is the fashion, the applauded fashion, to criticize not only the individual lawyer, but the profession as a whole. That is not a recent thing. You examine literature all the way from Chaucer to Carl Sandburg and you will find hardly a single complimentary reference to the lawyer.

The only explanation that I can find for that is the fact that the lawyer has confronted the mob spirit and felt the vengeance of the mob. Our reply to that criticism of the profession is this, that the lawyers formed this government and, if it is to be preserved, in my opinion they must preserve it.

Now what has that to do with this work? Merely this, that the lawyer's voice as an individual is lost in the bedlam, that there must be some body constituted to speak for the lawyer as a group and for the profession of the law. The American Bar Association as now constituted can't do that. If it is to speak for the profession as a whole, it must be reconstituted by an enlargement of membership and by a representation of the other Associations which, speaking individually, speak only with a feeble voice.

I regret that the Committee has not found it possible to make a definite and concrete recommendation. I realize the time it takes to sound the sentiment throughout this country and mobilize the forces in sympathy with this movement. But in my judgment the time has come for concrete action, and there is no reason why we should not this afternoon at least recommend something definite and concrete.

I think our ultimate endeavor should be to constitute a body, as I say, that can speak for the lawyer. That is the objective at which we aim.

What are the mechanics? There are four plans suggested. In my opinion, the first three are simply elements of the fourth. Take the National Bar Program, well and good, but after all it is just talk. Let it be continued, but that is not the objective.

The reformation, if you want to use a much-abused term, of the constitutional structure of the American Bar Association. Desirable? Yes. Probably necessary, certainly so far as enlarging the powers of the General Council is concerned or constituting some correlated body. But only a means to an end.

Service, Mr. Chairman, yes; but, after all, that is a mere utilitarian incidental to make the Association attractive, a means to an end. All parts of the fourth plan, which contemplates the federalization, if you want to use that term—I don't care how you get at it—but which contemplates a plan by which this Association really speaks for the American Bar.

We can't adopt, and in my judgment it would be unwise to attempt to adopt or recommend this afternoon, a concrete plan, but we can take the first step, a step which will be forward, will bring us to a concrete plan at our next annual meeting.

I have not a resolution but a suggestion to make, and that suggestion is this: that it is the sense of this Conference that the recommendation be made to this Committee and to the Executive Committee that this Committee formulate a

definite plan of coordination, that a meeting this fall or this winter be held, attended by the members of the Executive Committee, the members of the General Council, delegates of the local and State Bar Associations, perhaps the Chairmen of the Sections and others invited to attend, for a discussion, prolonged if necessary, of this definite plan, with a recommendation to the next Annual Meeting of this Association, together with the recommendation of the constitutional changes necessary to make this plan effective.

In my judgment, and I am not going to trespass further on your time, the time has come for action and not for talk. The report of this Committee—and it is a valuable report because its personnel stands as high as any member of the Association—I know personally its work has been painstaking and thorough—this report is eloquent but recommends no definite action. I am reminded of what someone said in contrasting the eloquence of Cicero and Demosthenes. He said, "When Cicero spoke the Romans said 'What a great orator is Cicero.' When Demosthenes spoke the Athenians said, 'Let us go against Philip'." The time is come to hear and heed the voices of someone who will send us against Philip.

A Concrete Plan for Coordination . . . . . By Carl B. Rix

Former President of Wisconsin State Bar Association

THE daily contribution of the members of the American Bar to the individual and public life of this country is a complete expression of the righttul place which the American Bar has always had in this country.

But can the high ideals and ethics, which are the property and selfimposed obligations of the individual members of the bar, be maintained unless the bar, as a whole, has the confidence and esteem of the country and of the individual members themselves? Can we secure an aroused bar of this country, united in a common effort, determined to maintain the traditions of the American Bar, to exercise the privileges and obligations of leadership of thought and action? Such an aroused bar, and I believe we have it now, must speak not as individuals but by and through a cohesive organization, the American Bar Association and its natural constituent parts. the state bar associations. Seventeen states now have integrated bars and, out of the common experiences are coming stronger, more aggressive, organizations. The impact of forty thousand lawyers, working through their integrated bars, is bound to be felt by the American Bar Association and it furnishes a nucleus of effort and action which will be invaluable. With strong, virile constituent parts the necessity for coordination of those parts with the American Bar Association becomes increasingly important.

We have wrought long at coordination of the bar. Can we now take a definite step forward? What is there to hold us back? The adoption of a perfect plan? Can we ever hope to achieve that? What material have we at hand? What foundation have we upon which we can build?

In his letter of August, 1933, our revered leader of the bar, Hon. Elihu Root, said:

"The rapid changes in social forces and organization imperatively demand from the Bar of the United States an active exercise of its influence upon our laws and the administration and enforcement of law. For the performance of this duty there must be in the bar new coordination of consideration, discussion, and seasoned opinion, and there must be means for impressing the conclusions thus reached upon all thoughtful citizens. This will require further organization to facilitate the process of discussion and authentic statement."

Hon. John W. Davis, in his article in the American Bar Association Journal, said:

"No one would be more reluctant than I to abandon the essentially democratic character of the American Bar Association. Nor do I see why any member in good standing should be denied the privilege of the floor at any meeting, annual or otherwise. I would preserve in any machinery that might be set up for the purpose the right of every member to be heard in the selection of those who are to represent him. But I think the Association would be strengthened on every side if the right of final decision, the power to pledge the opinion, the good name and the influence of the Association were confided to a body of representative delegates chosen from the bars of the several states. That, after all, is the American system in all matters governmental. It has right reason and established practice in its favor."

Have we the agencies now at hand to achieve those objects? I believe we have and I have the temerity to present this simple, concrete plan of action for your earnest consideration:

1. That the present Conference of Bar Association Delegates be utilized with a more definite status and purpose and as a coordinating agency.

2. That at the annual meeting of each state association there shall be elected:

(a) The nominee of each state as member of the General Council as the term of such member expires. This may be permissive only, thus legalizing the practice of Illinois and California.

(b) The quota of delegates from each state to the Conference of Bar Association Delegates. In order to provide continuity of effort, the terms shall be three years. The members of the General Council shall be ex officio members of the Conference and entitled to all privileges of the delegates.

3. The member of the General Council for each state shall be chairman of the delegation. Failure to attend the opening meeting of the Conference shall entitle the chairman to nominate an alternate for such meeting.

4. The Conference of Bar Association Delegates shall meet on Monday and Tuesday before each annual meeting and at such other times and places as may be advisable. The reports of committees of the Association, including the Executive Committee, containing recommendation for action by the association, proposed resolutions and matters of general interest, shall be considered by the conference and action taken on such reports and

recommendations. When the committee reports or the resolutions shall be submitted to the convention, the action of the conference, if any, shall also be submitted. If the action of the members shall be adverse to the recommendation of the delegates to the conference, the action of the members shall not be final until the next annual meeting, during which time the matter may be fully considered by the members and state associations. The conference shall retain its present purposes and objects.

5. The chairman of each delegation shall secure such prior consideration of all matters by his state association and delegates as may be necessary and advisable.

The advantages of this plan are obvious:

1. The member of the council from each state will be responsible for the work of each state. The status of the general council and its members will be elevated in purpose and importance. For a number of years the chairman of the general council has sought to increase the effectiveness of that fine body of capable men. Why should that body be limited to the work of a nominating committee only?

2. The Conference of Bar Association Delegates will be elevated in purpose and effort. The present effective work of committees and officers of the Conference will be continued, but the present fatal defect in the organization that no definite work or purpose has been assigned to the delegates themselves will be remedied.

3. Continuity of effort and division of interest in the work of the associations will be achieved. All plans for increased service to lawyers may be carried out. The program of the American Association can be carried out more vigorously and effectively than ever before.

4. A definite expression of opinion may be secured and submitted to the country as representative and fully considered. The aim of Mr. Root will be achieved, "that for the performance of this duty there must be in the bar new coordination of consideration, discussion, and seasoned opinion, and there must be means for impressing the conclusions thus reached upon all thoughtful citizens." In the integrated bar states all of the lawyers are now members of the state association and means are at hand to secure definite and positive opinion of the members. Can it be doubted that those means will not be used? Has any definite opinion of the bar of this country been had on the child labor amendment, the world court? Will the country not rightfully look for guidance from the bar if an amendment is proposed to extend the control of the federal government over commerce, labor and business? The social security program in all its phases will present a fertile field in which the country will expect the advice and counsel of the bar.

5. Coordination will be achieved without the necessity for the creation of a separate house of voting delegates with governing power. The association, its sections and committees, which do such splendid work, can function as at present and the members in attendance will be the final authority on all matters. Until the membership of the American Bar Association is substantially increased I am not convinced of the advisability of changing management, or methods of management. The twenty-five thousand or more members of the association should not be subject to the control of the sixty thousand or more members of the state associations who are not members of the American Bar Association. The goal of an integrated bar of the United States may be difficult to reach. We should not fail to adopt a workable plan of coordination just because we cannot now achieve the ultimate.

6. It is selfevident that the work and status of the state associations will be strengthened and that more men in each state will have a definite interest in the work of the American Association. The position of delegates will be regarded as a privilege and an honor. Lawyers everywhere will gladly and faithfully serve as delegates but they must have a definite status and a definite purpose. If they are entrusted with the task of determining and voicing the opinion of the bar of their states, we can rest assured that they will execute the task faithfully and well.

7. Each one of the first three methods of coordination outlined in the report of the Coordination Committee will be utilized by this plan. Increased service to all lawyers, the National Bar Program, greater utilization of the General Council, find their place. In addition we strengthen the Conference of Bar Association Delegates at its weakest point by giving it continuity of an elected membership, we provide a means by which the associations may become articulate after seasoned discussion and study, and we furnish the proving ground for a completely integrated bar of the country. We take away no powers or privileges, we disrupt no present machinery of government.

8. An enduring bridge will be created which will connect the American and each state association, over which the work of the associations may be carried to and from each state. Members thoroughly conversant with the work and program ot the American Association will travel over that bridge, bearing with them their problems for study and consideration by the state associations. As the work becomes more effective, as the relationship becomes closer, more members from each state will be using that bridge. We are reminded of the Bridge of San Luis Rey and of the characters and problems of the five who went down with that bridge. After a permanent bridge shall have been erected for which we are all waiting, a complete representative system, we will, I am sure, review the progress made over this bridge with great satisfaction.

I repeat my question. Can any profession which does not believe and feel its own worth to the community, its own definite purpose and object, its contributions to the community commensurate with its abilities, which does not have the highest degree of pride in itself, its greatest purposes and achievements, maintain the high principle of ethics and ideals which are absolutely necessary in this great profession? Can those purposes be attained without the coordinated efforts of the profession through the bar associations? We must give leadership in order to achieve it. We must set up an organization through which that leadership, which is rightfully our heritage, can and will be exerted. We must build a bridge over which the dreams and aspirations of our splendid members may become the realities of the tomorrows.

Can the Bar Organize? It Can and Should. . .

. . BY CHARLES E. CLARK
Dean of Law School, Yale University

"ONCE to every man and nation comes the moment to decide"—so runs the old hymn. The next lines are so much in point that I shall not repeat them; but I still say that the moment for decision has now arrived for the American Bar Association. During this coming year it must determine whether it is to remain a voluntary, limited social and reform organization or is to move forward to become the spear head of a movement incorporating into itself and representing the entire bar of America. The time is ripe for decision. The stage has been set; the preliminary discussion and agitation has been adequate and informing and sufficient finances have been provided from the resources of the Association supplemented by a gift from the Carnegie Corporation for the purpose. If, after this preparation and with this momentum, no forward movement is had, then none need or should be expected again in your generation or mine. Make no mistake; inaction now is just as much a negative decision as an adverse vote would be.

Decision always renders one uncomfortable, for it involves serious mental labor. But here the issues are clear-cut and all the elements necessary for a reasoned conclusion are easily stated and apprehended. The choice should not be difficult. I have indicated it as one between *two* courses of action. That is what it is in spite of the *four* plans stated in the Committee's report and suggestions made or implied elsewhere. Plans one and two are essentially static in nature—that the Association remain as now a voluntary social organization. True one calls for continuance of the campaign of education in fundamentals of professional life known as the National Bar Program; but that should and will be had anyhow. True the other contemplates revamping of structural details of organization in various and sundry limited ways; but such changes are but the ordinary life of any organization, social or otherwise, which is not decaying unto death. It is but the running of the Red Queen in Alice in Wonderland, the running to keep up to the place where she then was. Plan Three contemplates more service for the Bar in the way of legal literature and information and the like. It states what the lawyers of America could naturally expect from an organized Bar, but it gives no way of achieving such organization. As a plan in itself, it involves direct competition with well organized private and commercial agencies. Such competition as an end in itself is not worth while and would be financially disastrous. But as a natural function of the Bar, following as an orderly development of Plan Four, it carries a real and attractive appeal to the profession. Plan Four, calling for complete integration of local, state and national associations welded into one comprehensive whole through a representative and delegate system of government is the only one which presents a real contrast to our present system.

Now I do not wish to decry the purposes and achievements of our present Association. Founded by a great man from my State and School, it has well carried out the functions he visualized for it at its inception. It has provided social contacts of an invaluable nature to many leading and public spirited members of the profession. And it has sponsored many worth while reforms, of which the campaign for higher standards of legal education is outstanding. Fresh in our minds is the successful outcome of the twenty-five-year battle in Congress for rule making power in the Supreme Court in federal civil procedure; though there is an irony which should not be overlooked in the fact that the act only passed after this association had, with some ostentation, withdrawn its support of the bill. There are limitations inherent in the voluntary form of organization. The association is not representative of the American bar; and there has been a resulting incongruity—at once appreciated by legislators and by the public—in its attempts to speak for the bar as a whole.

It's 27,000 odd members represent but 16% of the American lawyers; and it is well known that of its membership all but a percentage literally infinitesimal represent in essence merely inarticulate subscribers to its Journal. From these limitations certain consequences inevitably flow. The association cannot accomplish many things, which a real lawyers' guild could. It cannot adequately discipline its members or members of the profession generally, nor can it be the force it should be and for which the public properly clamors in raising and maintaining professional standards. It cannot supply the service to the lawyers which, for example, the doctors receive from the American Medical Association. It cannot help its constituents to adjust themselves to economic changes in professional business; it can merely fulminate against the unauthorized practice of the law while a wealth of untapped legal business, particularly of the ordinary man, lies at hand crying for attention if a properly organized bar could only point out how and where it can be effectively but inexpensively attended to. It cannot with dignity assume to speak for the bar. It must necessarily remain a social gathering of the older and financially successful lawyers. Under these circumstances it has not and cannot hope to capture and capitalize the idealism of the younger lawyers of the country or inspire the enthusiasm and the confidence of the public. It is, in short, an association, a club; it is not the organized bar, militant and efficient.

Now the way of change is pointed out by the movement for the integrated bar. That calls for group action by *all* the lawyers, not merely those who wish and can associate together. Already it is the rule of sixteen states and it is under consideration in as many more. It cannot be stopped; it should be aided and advanced by a national organization of similar character; in fact this it will soon demand. And since 175,000 lawyers cannot act as a town meeting, the representative form of

organization is an essential part of the concept of a United bar.

May I, in passing, express my sympathy with the spirit behind the suggestion made Monday at the Conference of Bar Delegates of a Fifth Plan, involving election and referendum by ballot of the members, while I deplore the pitiful inadequacy of the devices of reform here projected. Ballots and referenda—particularly if public pronouncements of views designed to represent the bar are to be had—may have their part as adjuncts to other reforms. In themselves, however, they will not contribute to the unification of the bar. Direct primary by mail—becoming more ineffective as the membership approaches the 175,000 limit—will be even more of a will of the wisp here than it has proven to be in state and national politics.

So I say, that nothing short of the representative system applied to all the lawyers of the country will be adequate. If this is so, we should move towards our objective at once. Even at best, it will doubtless be some years before it is attained, and we should not waste time and effort on temporary palliatives. And the task is not hopelessly difficult. The Doctors in 1900 faced a more discouraging situation and solved it effectively and rapidly. The time and money now being spent on bar association activities throughout the country, if directed by united effort, could easily bring about the result, aided by the traditional principle really enforced in the integrated bar that the lawyer is a public officer and as such with public obligations and subject to public control. Today, however, the bar associations do not aid but compete with each other. Though 60,000 lawyers are now members of various associations, effective organization rests nowhere for demands of the lawyer's time and money are made by local, by state, and by the national body, each in opposition to the other. United, however, the task would become simple.

Nor do I think it difficult, with care and consideration and forethought, to devise and perfect the mechanical details of organization. It is not my province to work out these details. May I say, however, that I envisage an organization whereby its business—not its social and intellectual and scientific interests which would still be cared for by annual and other meetings—but its ordinary hum-drum day to day activities in behalf of the united profession will be directed by a House of Delegates of 100 or more, meeting often during the year and adequately financed to that end; choosing its officers not for honor and for glory, but for long-continued time-consuming and absorbing work; giving no utterance to public pronouncements and propaganda but with those functions limited to the sections and other subordinate groups of the Association; and chosen for suitable periods by state and local associations which meet certain standards of membership and group activity or appointed for those associations which do not yet meet those standards—in short, an organization for work, not for play or prestige, an organization which instead of competing with local associations will give them the strength and backing they so vitally need. The system is practical. It exists in other professions. Shall we say that the lawyers with their much wanted claims for political and governmental leadership cannot accomplish what other professions have accomplished. As a matter of fact, I believe we cannot stop the movement if we would. If it is not done by the American Bar Association, it will be done by the integrated Bars or by the Junior Bar. It is coming because it is right and necessary; because the public and the bar will demand it. Why should not this historic organization lead the way?

A Plan of Action for Early Stages of the Program . .

BY HON. EARLE W. EVANS

Past President American Bar Association

MR. CHAIRMAN, Ladies and Gentlemen: That organization of the Bar is best which engages the active interest and promotes the militant support of worthwhile endeavors, of the largest number of the lawyers of the country. The ways and means of promoting and maintaining such an organization must necessarily change with the times and the development of information and enthusiasm. Plan number one seems best adapted to the present needs. Not that I would reject the other three as unworthy of consideration or of ultimate adoption, but they present questions that are now, in the present state of development, too controversial to attract now and hold the active support of the maximum number who might otherwise join us and grow in the movement toward the ideal.

The objectives of bar organization are, and of necessity must be, improvement in the administration of justice and the functioning of government generally. That, of course, requires cooperation of lawyers and laymen; but before lawyers can expect the cooperation of laymen necessary to approximate those objectives, they must first find effective means of drawing together, as members of working units, an increased and ever-increasing number of their own profession. The cooperation of laymen will follow in due time if the lawyers properly organize and prove themselves capable and worthy leaders. How may that be accomplished? Manifestly by "feeling our way," which is an oil developer's way of describing the policy of proceeding, at the outset of a program, with extreme care and with the absolute minimum risk of disaster. We should proceed with like caution during this early period of bar organization coordination activities. We should keep the program —especially at the beginning—within the ability and desires of a goodly majority of our members to accomplish.

It is more important at this time to have a large number of lawyers working together enthu-

siastically on the first step or two of a worth-while program than it is to have a relatively few together on the whole of the same program. There is grave danger that we may unduly tax the patience and lessen the enthusiasm of the rank and file by pushing, or permitting, the willing and well-informed ones to get so far ahead that the maximum of their enthusiasm and understanding cannot reach and influence the great mass of members who are expected to follow.

Ultimate objectives should, at the beginning anyhow, be stated in broad general terms sufficiently comprehensive to include all of the specific pet objectives of the maximum number of those interested. That course will bring to us and hold men of different specific objectives. In many cases they will differ radically as to the practicability of some of these minor specific objectives but agree, although perhaps upon different reasoning, upon the big and really important ultimates. We should find means of keeping our forces from arguing questions not of immediate consequence, of keeping them going along together as far as possible in the direction of our common ultimate objective. From time to time as the solidarity of the movement requires it, additional specific objectives may be added. Extreme care in the selection thereof will keep down antagonisms, and hold us together longer.

The National Bar Program is admirably adapted for, and has indeed served well, that very purpose. It has aroused the Bar. Lawyers are more eager to participate in bar activities than ever before—and that augurs well for the future. But notwithstanding their growing desire to serve, the rank and file lack as yet the enthusiasm that extended study engenders; and, of course, they do not have the quickened understanding of those whose study and participation have fired them with enthusiasm and dedicated them to the cause.

Let us, therefore, at this early stage of coordination development, gather our forces together and take account of our common store of desires and understanding. Then, with that account in mind, let us plan and take the next step toward coordination in the direction and in the manner that will carry along an ever increasing number of members of the bar and antagonize the fewest.

We have active in this present coordination project members with diverse views upon intermediate steps. But while they disagree sharply as to the ways and means of accomplishing ultimate objectives common to the ambitions of all, they seldom, if ever, disagree at all on the ultimate objectives themselves. One class of these controversialists is more persistently scholastic than the other, but of less experience with the actual day-by-day problems which confront the rank and file. In fact, each is vital to the maximum usefulness of the other. Nevertheless, they are antagonistic and at times downright intolerant each of the other. Then in each of those groups we have intellectual faddists and theorists—men who have theories without facts; men who have facts without theories; men who pursue facts incessantly without apparently ever finding any that are useful; men who find facts but never seem able to use them advantageously; men who build theory upon theory, presumption upon presumption and solve the world's greatest problems—to their own satisfaction anyhow—without firing a single shot. We also have men who just think that they have gathered facts, and some who just think that they have airtight theories.

All of these are sincere but not getting anywhere and they never will until they are coordinated. The greatest need of each the others can supply but do not and cannot because they seem now disposed to stand off and shoot at each other ineffectively at long range. Bring them together, upon almost any reasonable excuse—and hold them together for a while—and the group spirit will work wonders, stay the ruthless hand of intolerance and establish the coordination of individual effort which is absolutely necessary to real effective organization. Thus a program can be developed in which the best of each of these elements and schools of thought can be utilized—a program which the maximum number of lawyers will individually and actively support.

Now this situation, which is bad enough in and of itself, is aggravated by an acute trend of modern thought, which because of the vital importance of the movement to governmental functioning, must be seriously considered. There is a widespread suspicion, if not actual belief, that members of the so-called scholastic element are industriously promoting theories decidedly subversive of our present form of government. That is not true—very emphatically not true—of those of scholastic turn in our coordination movement. But their innocence, which we who know them intimately readily recognize as a fact, is not known to, but on the contrary is seriously questioned by, many members whose interest and support are vital to the success of any improvement in Bar organization. We cannot safely fail to recognize the fact of that doubt of loyalty. Whether it is well founded or not—as it certainly is not as respects our members who actively participate in this movement—a very considerable part of our people—and of our own members too—believe it and because of that belief will be slow to approve, with the wholeheartedness vital to success, any program that they choose to call the professional element. This unhappy state of affairs is certain to handicap our efforts to approximate the ideal in bar organization unless we recognize its existence—whether we believe it well founded or not—and govern ourselves accordingly. If we limit our present activities to those which the majority of all elements now believe, we will minimize the effect of that criticism. We should take only the steps *now* that such majorities are prepared to enthusiastically take together.

Worth-while men united, as we are in a common cause, will always find ways and means of promoting it unless, perchance, they indulge the foolhardiness of remaining insistently intolerant and, because thereof, blindly refuse to cooperate on the more or less mechanical details with which to advance toward a common goal—refuse merely because the long time program of ways and means is not then and there endorsed. We must not refuse to get together in the work of today merely because we do not agree on that of tomorrow or next year.

As before stated, the best ultimate objective, indeed the only worth-while one, of bar organization is improvement day by day in governmental

functioning. The best thing that we can do now with our lack of common understanding, to promote an improved bar organization that will in turn promote those ultimate objectives, is to occupy ourselves with coordination activities that will now attract and hold an ever increasing number of our profession and antagonize the fewest. Their association together and the group spirit engendered thereby will do much to dispel suspicion and enable us, all in good time, to advance —slowly perhaps but nevertheless surely—towards the accomplishment of our common ultimate objective—a better administration of justice and a progressive improvement of governmental functioning generally.

The National Bar Program has already accomplished much in just that way and it can easily be expanded to include such other items of ways and means as may be desirable. Whatever the Bar of the nation does to promote this objective will necessarily be a National Bar Program anyhow, so why not let it be so "nominated in the bond?"

May it be again stated that that organization of the Bar is best which engages the active interest and holds the militant support of worth-while endeavors, of the largest number of the lawyers of the country? Plan number one seems better calculated than any of the others to so direct the steps to be taken during the next six months or year.

Coordination and the Lawyers' Fight . . . . . BY HARRY P. LAWTHER

Member of Executive Committee, American Bar Association

THERE is no organic connection today between the American Bar Association and any State or local Bar Association. The condition in the country today is that every Bar Association, local, state, or national, is an independent unit, traveling its own road, and many of them with no definite road to travel.

A country boy went to town one day and thought he would go through the art gallery. He did, and got back home, and his father asked him what he saw. Well, he said, he saw a great many pictures, but the painting that attracted the most attention, had the biggest crowd around it, was called "Daniel in the Lions' Den." The old man asked him what he thought of it. Well, he said, he didn't think much of it. "What was the matter with it?" "Well, it was too tame." What do you mean, 'too tame?'" "Well," he said, "Daniel didn't seem to be giving a damn for the lions, and the lions didn't seem to be giving a damn for Daniel."

The condition of the various Bar Associations throughout the country today is just that. The Bar Association of Massachusetts is not giving a damn for that of Mississippi and the Bar Association of Texas is not giving a damn for that of Minnesota, and a vast majority of the lawyers in the country, over 170,000 now, are not giving a damn for any Bar Association. (Laughter and applause).

What would you think of an army that went out to battle with each division, each brigade, each battalion, each regiment, even each company, going into the fight under its own separate independent command, with its own independent plan of battle, irrespective of the plans of every other unit in the army?

Let me tell you all something: The lawyers of this country today, those lawyers who look upon their license to practice not as a means of making a livelihood only, not as a mere opportunity of making money, but as a call to public service, a call for the work of their profession and of their country—these men, whether in or out of the Bar Association, are never going to be able to win their fight under the conditions that exist today.

Now, what is their fight? First we want to raise the standard of qualification for admission to the Bar. Over 10,000 young men in this country yearly are admitted to the Bar, many of them unprepared, many of them with not sufficient pre-legal education, many of them of a low standard of moral character. And what is the result? Unable to obtain business, inevitably they drift into evil practices. We wish to raise the standard of conduct of those men who have already been admitted to the practice of the law.

Do you know that America is the only country in the civilized world, outside of those States that have the Integrated Bar, in which the Bar has no disciplinary power over its own members? There is not a man in this audience who doesn't know that in his locality there are lawyers, few in number it may be, who daily and openly and above board are engaged in the practice of barratry and even worse. These men, working in the livery of God to serve the devil, bring a reproach upon the whole profession.

We have got to clean our own house. We want to restore the profession to that place of prestige and honor which it formerly enjoyed and which is its right.

We want to do another thing. We wish to raise the standard of the bench in this country. What chance have you for the administration of justice with an ignoramus on the bench and a crook at the bar? And to that end we wish to do away with the damnable system of selection of judges by primary election. In the primary system there is no such thing as the office seeking the man. The races are free for all, for any and everybody that wants to run. Down in my state, if there be a vacancy on the Supreme Court bench which is to be filled, any lawyer, and any kind of lawyer, I don't care if he doesn't know the difference between livery of seisin and livery stable, can become a candidate, and if he is a prohibitionist or a member of the Baptist church, and more if he be both, he could beat Elihu Root or John W. Davis for office.

The Committee on Coordination—Harry S. Knight, Jeff Chandler, and the other members of

the Committee—in the past few years have rendered a service not only to the American Bar Association, not only to their profession, but to the country and to the people, that it is hard to estimate.

At the May meeting of the Executive Committee, in Washington, this Committee, with a subcommittee of the Executive Committee, invited from the various Bar Associations over the country expressions upon the program which they had put forth in their first, second, third and fourth plans. I want to tell you what I think we have to do, and the only thing we can do.

The constitution of this association, with very little change, is the identical constitution which was drafted by Simeon E. Baldwin of blessed memory, and was adopted by the seventy-five lawyers who on the twenty-first day of August, 1878, met in the old Town Hall of Saratoga Springs, New York, and organized the American Bar Association. At that time, in the United States, lawyers generally were not bar association minded. There were very few State Bar Associations and fewer local Bar Associations.

The time has gone by. Conditions now are not as they were then. The problems which the lawyers of America today have presented to them are not the problems that confronted those gentlemen in 1878.

I say one course to me and to my mind is very clear, and that is, we must effect a change in our Constitution and organic law.

Organization of State Bars by Judicial Order.

. . BY HON. FRANK E. ATWOOD

Former Justice, Supreme Court of Missouri

IN its relation to the public problem of adequate functioning of bench and bar the subject of better organization of the bar is of nation-wide interest and importance. Under the impetus of the American Bar Association's program the subject has been studied anew in practically every state in the hope of discovering and adopting a more effective plan of cooperation to meet modern conditions.

We talk about "bar integration" and of the bar speaking with "one voice," many times perhaps having no definite concept in mind. First of all, let it be definitely agreed that the broad objective of bar integration is improvement of the administration of justice, and the difficulties may be met with clearer vision.

Despite the ever-widening field of bar activities and devolving social obligations in associational work, lawyers must primarily concern themselves with matters that properly and in a very practical way pertain to their profession though always obedient to the larger vision that makes their particular work worthwhile to themselves and to society. Our associations should not lend themselves to propagandize controversial matters which lie beyond these proper bounds.

Even within the sphere of their professional activities it is not likely that lawyers will or should always "speak with one voice," and we should not adopt any form of organization that will stifle the earnest competition in efforts to improve the administration of justice. The objective should be quite otherwise, and conditions are so widely different in the several states that I doubt if any closely knit plan of national bar organization can be offered until state organizations are farther advanced in their efforts to integrate the bar.

No plan has yet been evolved that seems either acceptable or workable in every state. Perhaps I can best utilize the time by briefly outlining the situation in Missouri.

For several years our state association has been, and still is, working under the affiliated plan. This plan has been very helpful but we have progressed far enough to experience some of its inherent weaknesses.

One of the most solemn provisions of our state constitution is that vesting the judicial power to certain courts, and our supreme court has long been committed to the doctrine of inherent or implied powers. Another provision is that giving the supreme court "a general superintending control over all inferior courts." Probably with these two constitutional provisions and the foregoing inherent or implied powers in mind, the executive committee of the Missouri Bar Association a little more than a year ago requested the supreme court "to appoint a commission of at least seven members with power to investigate the means of regulating professional matters and that said commission report to the court, within such time as the court may direct, its findings and recommendations with respect to the regulation of the practice of law in this state."

This request was not deemed unreasonable or without precedent in the history of bench and bar and an outstanding commission consisting of eleven members of the bar was appointed and instructed to "make a thorough invesigation and study of the subject of regulation of the practice of law, particularly with a view of ascertaining its most practical and effective scope and administration in this state, and make report thereof to this court." After some months of investigation and study its report was prepared and filed. Upon careful consideration the court adopted and promulgated the rules recommended therein as rules of the court which become effective November first of last year.

These rules of court, together with statutes lending added sanction and legislative force, now present a fairly comprehensive scheme for regulating, improving and advancing the bar in its true relation to the administration of justice.

The question that now confronts us is how best to coordinate the machinery thus set up by the Supreme Court with a proper organization of the state bar. It is thus accurately stated on p. 65 of the

American Bar Association Journal for January, 1935:

". . . A suitable policy was submitted at the recent annual meeting by a special committee and reserved for decision next year. It is proposed that the Association change its name to the State Bar of Missouri and assume that it will acquire the allegiance of all practitioners. Provision is made for an executive committee with powers comparable with those of an official state bar board. The committee will comprise the State Bar officers, editor of its Journal, chairman of its judicial conference, general chairman of the Supreme Courts disciplinary committees (a former president of the Association), the chairman of the state judicial council, and the chairman of the conference of local bar presidents. The president and other customary officers are to be nominated by a general council, as in the American Bar Association. The members of the general council are to be elected at annual meetings of the circuit bar organizations. Membership to the satellite circuit bar organizations is open to all lawyers who pay their dues to their locals and to the State Bar. The new constitution creates a judicial conference to comprise the judges of the appellate and circuit courts and the members of the judicial council; also a conference of the 152 members of the bar disciplinary members; also a conference of the presidents of thirty-eight circuit bar organizations.

"The plan would give Missouri a more thoroughly implemented bar than exists in any state. There would be an integration of the judiciary separately and with the State Bar; the judicial council is tied in; the disciplinary machinery, while controlled by the Supreme Court, has a place in the new scheme; the conference of circuit bar presidents is equivalent to a highly selected delegate conference. While membership is not compulsory no excuse is afforded any lawyer for refusal to join. It is easy to presume for such organization a great vitality in every circuit and resultant significance for the central body, which retains accustomed democratic powers."

That courts have judicial powers which now lie unused or undeveloped is suggested by the fact that for the first half of our national history the judicial branch of government carried full responsibility for the administration of justice. The bench and bar were not then so constituted as to be responsive to needed reforms and legislatures sometimes acted in matters strictly judicial because there was no other organ for the expression of the popular will. If it so happens that now the attitude is reversed and legislatures are generally unresponsive to reform needs, it is but natural that people should turn to the courts. In this situation it will scarcely be said that a constitutional court of competent jurisdiction should omit or stay performance of any of its judicial functions because of prior legislative encroachment or until the passage of a legislative act "conferring" any judicial power that it possessed . By the mere encroachment of one or the neglect of another neither branch of government can gain or lose power in contravention of the constitutional separation of powers. Assuming the existence of such a constitutional provision, powers belonging to one branch cannot be legislatively conferred upon another. The solution lies in a proper determination of the limits of legislative and judicial power. However lightly some may regard the constitutional separation and distribution of governmental powers, it is still the pattern of our fundamental law. Whenever a better form of government for our people is devised we will doubtless adopt it, but until such is lawfully done it is neither honest nor safe to scramble or destroy the pattern.

So much for the legal as well as practical justification of better organization of the bar by judicial order.

A Satisfactory Plan Can Be Devised . . .

. . BY JAMES GRAFTON ROGERS

Professor in Law School, Yale University

MR. CHAIRMAN, I have no intention of speaking at length this afternoon. All that could be accomplished has been accomplished in the passage of a general resolution of instructions for the authorities to formulate or attempt to formulate and submit to the Association a program in the general direction stated.

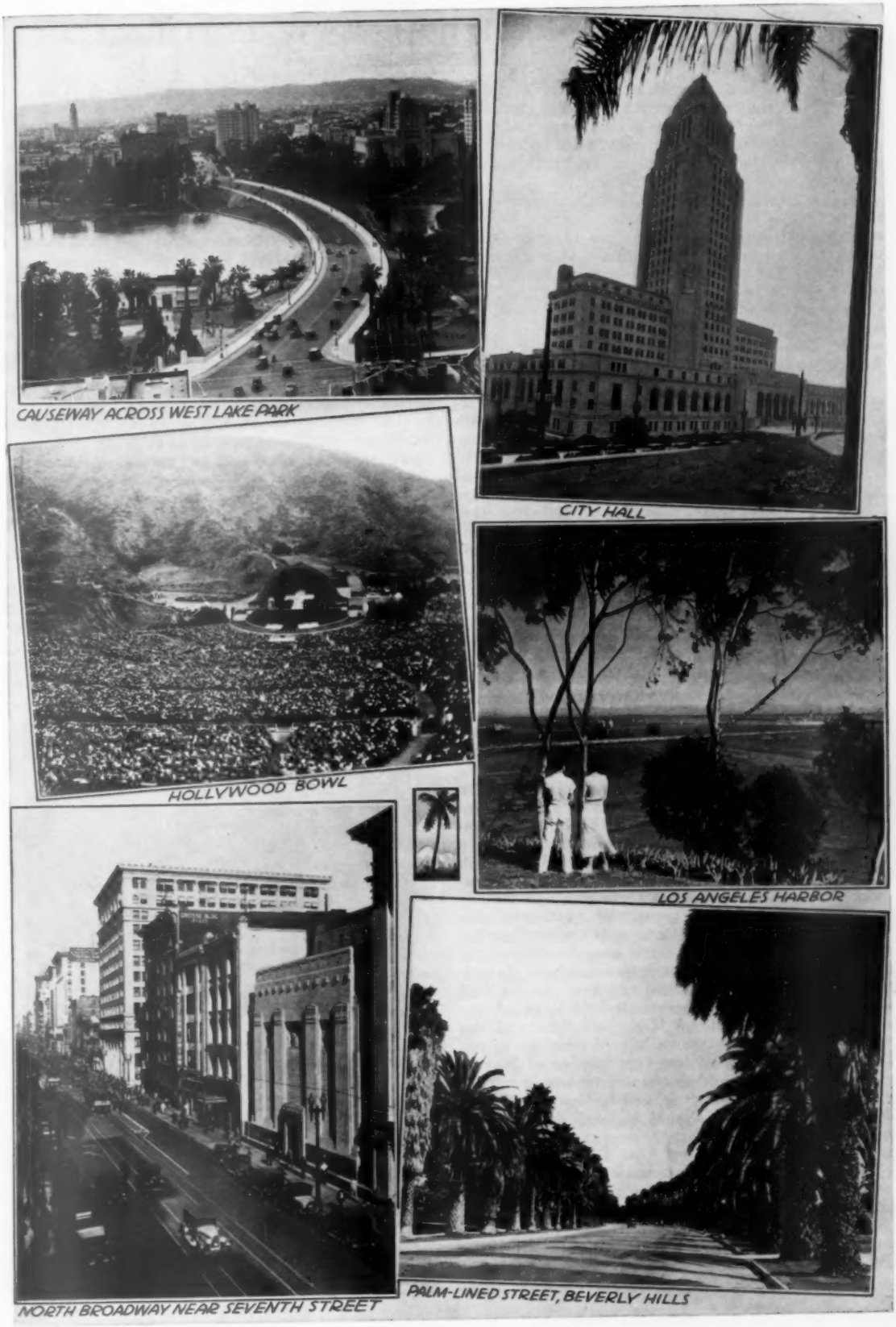
The present movement began in about 1929 by the appointment of committees as the result of an address I made before the Conference of Bar Association Delegates at Memphis, in which I called the attention of the Association to the past history of its own organization, making no particular contribution in the way of the future. I have followed this thing intimately. I have not contributed very much of the load of energy that has been thrown into the movement, but I have followed it intimately, carefully, and thoughtfully as it goes on.

I, for one, am ready to try to draw a plan, and I believe it can be drawn. We must face a certain amount of bridging. As Judge Atwood has just said, we have not yet developed in many of the States a local organization sufficient to stand as a footing for the pyramid which, in the end, will be erected and will center at the top in this Association, but we can bridge the time, meantime, by compromises, and there isn't a government in the world whose structure is not based on exactly that sort of compromise.

I am content with the sentiment which has developed at this meeting in Los Angeles. That sentiment is that we should endeavor to go vigorously ahead into the somewhat muddy and tumbled waters before us, that we are going to drift no longer. I am ready to go ahead. I am confident that a group can work out a plan which will, while not beyond debate, meet with your approval next year, and under those circumstances it seems to me that what could be accomplished today has been accomplished.

A Great California Benefactor

"The gift to the people of the late Henry Edwards Huntington comprising his estate of over 200 acres, the Library and Art Gallery, as a 'free public research library, art gallery, museum, and botanical garden,' for the 'advancement of learning, the arts and sciences, and to promote the public welfare,' represents one of the most valuable benefactions of an individual to California."—*Los Angeles Bar Association Bulletin.*



CAUSEWAY ACROSS WEST LAKE PARK

CITY HALL

HOLLYWOOD BOWL

LOS ANGELES HARBOR

NORTH BROADWAY NEAR SEVENTH STREET

PALM-LINED STREET, BEVERLY HILLS

SECTION ON MUNICIPAL LAW IS FORMED

THE Section of Municipal Law was organized at Los Angeles, a testimony to the significant work of the Committee of that name and to the growing realization of the importance of the subject and the large number of lawyers who are interested in that branch of the law.

The Special Committee on Municipal Law, the forerunner and progenitor of the new Section, met in the Biltmore Hotel on July 16 in an atmosphere of impending importance. The Executive Committee had agreed to recommend the creation of the Section, and no one doubted that the Association would adopt that recommendation. Chairman Tooke called the Committee to order and presented Hon. Ray Chesebro, City Attorney of Los Angeles, who delivered the address of welcome.

Chairman Tooke thanked the speaker for his speech of welcome, and then called on the Secretary, Mr. Arnold Frye, to make a statement with regard to the attitude of the Committee. Secretary Frye said:

"Very briefly, this Committee was appointed in 1933. We endeavored to test out the sentiment of municipal lawyers as to the possible function of such a group. There has been some little correspondence. We have received very favorable replies, indicating that a large number of municipal lawyers feel that there is a place for a Section of Municipal Law. As a result, the Executive Committee at its May meeting in Washington decided to recommend the formation of such a Section, and will so recommend in its report. Hon. William L. Ransom, representing the Executive Committee, has been so good as to act as our godfather and mentor, and has very kindly consented to speak to us today. Judge Ransom."

Judge Ransom was received with applause and said in part:

"Mr. Chairman, Mr. Frye, Ladies and Gentlemen: It is a pleasure and an honor to come here this morning to speak to you briefly about the conference held under the auspices of what is now a special committee of the Association, but which we believe will soon be a Section of the Association. . . .

"There are two phases of the creation of this Section which I should like to speak about just for a moment, because they seem important from the point of view of the larger interests of the Association and the lawyers of this country. In the first place, I welcome very cordially the idea of the creation of a Section of Municipal Law and the bringing into the American Bar Association of the influence and activity of the large number of lawyers who are engaged in this country as attorneys for governmental units, boards, and bodies. The American Bar Association should be, and should at all hazards be made, thoroughly representative of the profession in this country from all angles of relationship to the law. There may have been a time when relatively few lawyers were engaged in the work of their profession in public office, and the great body of the profession represented private interests. Owing to the great multiplication of the activities of government today there is a great army of our profession whose service as lawyers is rendered to government and who act and speak for the public side and the public approach to legal questions. . .

"In the second place, there is an additional reason from the public point of view. If local government in this country is not to give way to remote centralization of power, a great deal remains to be done and done quickly to improve and restore the vitality of municipal and local government in this country.

"If centralization and bureaucracy come in this country, they will come only if, and to whatever extent, in my judgment, local self-government fails to meet the needs and the wishes of the people of the land. So right at this time, every lawyer who realizes the difficulties inherent in centralized and remote government, and who wishes to preserve to the communities of this country the power to govern themselves according to their own local needs and conditions, ought to embrace the opportunity of doing something in behalf of the improvement and the vitality and the adequacy of municipal government. I believe very fully that through the agency of this new Section of the American Bar Association it may be and will be possible over a period of time for the lawyers of America to make their contribution to that improvement. . . ."

Judge Ransom concluded by dwelling on the task which now confronted the profession as a whole—that of building a better and more representative organization of the Bar. Chairman Tooke thanked the speaker for his instructive address, and then announced that the next step before

Harris and Ewing

CHARLES W. TOOKE
Chairman of Municipal Law Section

the Committee was action looking toward the organization of the Section. Chairman Tooke was thereupon nominated and elected as temporary Chairman and Mr. Frye as Temporary Secretary.

The regular program, as printed in the Advance Program, was then taken up. Mr. Edward J. Dimock of New York, read a paper on "Legal Problems of Financially Embarrassed Municipalities." He was followed by Mr. Arthur T. Vanderbilt of New Jersey, who criticized the speaker's attack on this particular problem, and by Mr. Sayre Macneil, of California, who added his comments on Mr. Dimock's paper. Mr. Jacob Lashly, of St. Louis, Mr. Francis P. Fleming of Florida, and Mr. Giles J. Patterson of the same State also discussed the same subject.

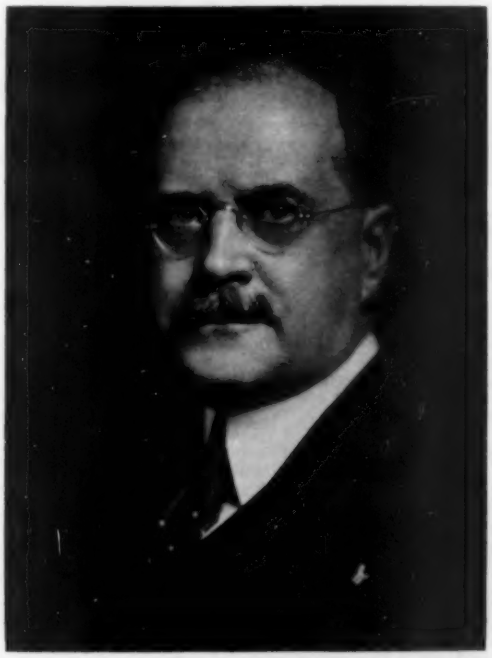
At this point the Temporary Chairman announced the appointment of the following committee on By-Laws: Judge Eugene McQuillin, St. Louis; Mr. Giles J. Patterson of Florida; and Mr. Arnold Frye of New York. He also named the following Committee on Nominations: Mr. Charles M. Hay, St. Louis; Mr. Edward H. Foley, Washington, D. C.; Mr. Leon T. David, Los Angeles.

He then introduced the next speaker on the program, Mr. E. H. Foley, Director of the Legal Division of the Federal Emergency Administration of Public Works. Mr. Foley had presented a paper a year ago at the Committee's meeting at Milwaukee, which became the Bible of a great many municipal attorneys throughout the country in the matter of public loans. The work that had been done under his direction at Washington, in connection with the legal side of this lending by the Federal Government had been extremely constructive. Mr. Foley then read his paper entitled, "PWA and Revenue Financing of Public Enterprises."

At the second session, which was held Wednesday morning, Mr. James L. Beebe, of California, discussed Mr. Foley's paper. The Chairman then announced that the next subject on the program was a paper by Mr. Gordon Whitnall of Los Angeles on "Reorganization and Consolidation of Units of Local Government." The subject was important and he believed that the Section should devote a good deal of study to it during the coming year.

Mr. Whitnall was unavoidably absent, and his paper was read by Secretary Frye. Some of its features were discussed by Dean Thomas C. Kimbrough, of the Law School of the University of Mississippi, by Mr. E. C. Arnold, of Tennessee, Judge Eugene McQuillin, of St. Louis, Mr. Giles J. Patterson, of Florida, and Mr. Max Raskin, of Wisconsin. At the conclusion of the discussion Mr. Charles M. Hay, of St. Louis moved that the subject be made a matter of first consideration of the Section at its Annual Meeting and that proper steps be taken, by the appointment of committees and otherwise, to have the subject presented even more fully. The motion was adopted.

The Committee on By-Laws next submitted its draft, which, it was stated, would be subject to the final definite approval of the Executive Committee of the Association. They were intended, it was stated, to make the Section broad enough to include all members of the Bar interested in municipal law in any way and not to confine it to any particular group of municipalities or any type of public corporations or public body. The By-Laws were unanimously adopted.



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ARNOLD FRYE
Vice-Chairman of Municipal Law Section

The Committee on Nominations next reported, naming Temporary Chairman Charles W. Tooke, of New York City, Permanent Chairman; Arnold Frye, of New York City, Vice-Chairman; and Giles J. Patterson, of Jacksonville, Fla., Secretary.

Vice Chairman Arnold Frye was called to the Chair. He announced that the next item on the program was a paper on "Legal Problems of Local Taxation," by Dr. Roger J. Traynor, of the University of California School of Jurisprudence. Dr. Traynor read his address, which was discussed by Mr. Harold Huls, City Attorney of Pasadena. Mr. Frank S. Grant of Oregon, briefly spoke of "General Municipal Problems," after which the Chairman called for suggestions as to subjects that the Section should consider. Mr. Max Raskin, of Wisconsin, suggested the so-called benefit assessment law as a subject of wide interest. Mr. Leroy Brittingham, of California, suggested studies of civil service laws, Mr. Roy C. Bennett, of Arizona, the consideration of a model form of government for the various irrigation and other Federal projects when the States resume control, Mr. Ganson Taggart, of Michigan, the liabilities of cities for torts and other matters of that character, and Mr. Charles M. Hay, certain phases of the traffic problems of cities.

Dr. Tooke resumed the Chair and Mr. Frye then presented a resolution of thanks to the members of the California Bar for the cordial welcome received and another resolution thanking the Executive Committee for the interest shown in the establishment of the Section. The meeting then adjourned.

FIFTY-EIGHTH ANNUAL MEETING

(*Continued from page* 483)

deal with the highly technical and scientific subject of insanity except perhaps in its most extreme form; and

"Whereas, There seems to be much confusion of thought upon this subject as represented by a criticism of the courts for not taking sufficient notice of disorders of the mind of a less obvious nature in the trial of a criminal case, coupled with a criticism of the law for leaving this difficult problem to be solved by twelve persons who have no training or experience in this field; and

"Whereas, It is advisable to limit insanity as a defense to the most extreme forms and to leave any less obvious forms of disorder of the mind to be considered after conviction by the court and other authorities as a circumstance indicating necessity for special and appropriate care and treatment of the offender; and

"Whereas, The law and the administration of justice should take advantage of the important contributions of justice in the field of disorders of the mind in analyzing and counteracting tendencies toward anti-social conduct,

"Now, Therefore, Be It Resolved, by the American Bar Association that it is desirable to keep within rather narrow limits the kind and degree of disorders of the mind which will entitle the defendant in a criminal case to an acquittal, and to readjust the machinery after the point of conviction to the end that disorders of the mind which are not sufficient for an acquittal may result in treatment other than that provided for persons who are not mentally disordered."

The resolution was unanimously adopted, after which Chairman Whitman presented Hon. Orie L. Phillips of the United States Circuit Court of Appeals, who delivered his address on the subject of "Making Disciplinary Procedure More Effective." It is printed elsewhere in this issue.

Hon. Nathan William MacChesney, Chairman, presented the report of the section of International and Comparative Law. He stated that the report contained only one matter which required action, and that was with reference to the suggested uniform act upon the proof of foreign law. The text of the act was attached to the report and the Section recommended that it be referred by the Association to the National Conference of Commissioners on Uniform State Laws for early action.

He also wished to call attention to one matter in the report which might be of interest to the bar, and that was the pending Healy Bill in Congress which provided penalties for the giving of advice by any member of the American Bar with reference to foreign divorces. It was sought to take action on this matter at the Section but it was referred to the Council, which has the act under investigation. The Section recommended that the matter be taken up with the Executive Committee of the American Bar Association in due course to see what if any action should be taken with reference to that bill. There was some feeling that it puts the lawyer in a serious position with reference to proper advice to clients.

On motion the proposed uniform act on the proof of foreign law was referred by the Association to the National Conference of Commissioners on Uniform State Laws for consideration and action.

Report of Commissioners on Uniform State Laws

Judge Orie L. Phillips presented the report of the Conference of Commissioners on Uniform State Laws. It stated that ten sessions had been held at the recent meeting and seventeen tentative drafts on sixteen subjects had been considered. The final draft of the Uniform Airports Act had been duly adopted, as were also the Third Tentative Draft of the Uniform Aeronautical Regulatory Act, the Second Tentative Draft of the Uniform Vendor and Purchaser Risk Act and the First Tentative Draft of the Uniform Transfer of Dependents Act. He moved that the Association approve these four Uniform Acts and recommend them to the States for adoption.

No objection was made to voting on the four Acts at the same time, and all were approved.

Mr. Frank C. Haymond of West Virginia, Chairman, presented the report of the Section on Insurance Law. Since the report contained no recommendation but was merely factual in nature, he would simply read the title and ask that it be received and filed. He might say, however, that the Section on Insurance Law, which was one of the newer Sections of the Association,, during the past year had had under consideration a number of subjects of vital interest in the field of insurance law—such things as a consideration of the regulation of insolvent insurance companies, the adoption or formulation of uniform casualty insurance laws, automobile policy, and other matters of that kind. The committees of the Section were doing effective work in those matters and promising real progress.

The report of the Judicial Section asked for no action by the Association. It was signed by the Vice Chairman, Charles A. Goss of Nebraska, in the absence of Chairman Morris A. Soper of Baltimore. The program as printed in the Advance Report had been carried out. There had been a joint session with the National Conference of Judicial Councils, at which a resolution on judicial decorum was presented by Chief Justice Carl V. Weygandt of Ohio, and unanimously adopted. The resolution read as follows:

"Whereas, the courts of this nation have been recently subjected to increasing public censure for indecorum in the conduct of their sessions, and

"Whereas, This fact has tended to destroy respect for courts and law, and

"Whereas, Confusion, disorder or distraction is utterly subversive of effective court procedure, and

"Whereas, the average citizen properly resents any sort of indignity in the solemn tribunals where his property, his liberty and even his life is placed in the balance,

"Now therefore, be it resolved, by the Judicial Section of the American Bar Association in annual meeting assembled at Los Angeles, California, this 16th day of July, 1935, that the wearing of a robe be earnestly recommended to every judge of a court of record, and

"Be it further resolved, That witnesses should not be sworn in groups, but that each have the oath administered to him immediately before he testifies, and that permanent record of such fact be made, and

"Be it further resolved, That no court should permit its sessions to be interrupted by broadcasting or by the taking of photographs or moving pictures, and

"Be it further resolved, That this Judicial Section recommend the amendment of the Canons of Judicial Ethics to incorporate the substance hereof."

The remainder of the program had been devoted to the general subject of the "Courts and Administrative Agencies." Hon. John Dickinson, Assistant Secretary of Commerce, read a paper on the specific topic of "Quasi-Judicial Action as Administrative Function," and Mr. Louis G. Caldwell, Chairman of the Association's Committee on

Administrative Law, had presented the topic of "The Administrative Court as a Means of Separating the Judicial from the Legislative Functions of Administrative Agencies." A discussion of these papers was given by Prof. John D. Clark, of the University of Nebraska, Prof. Max Radin, of the University of California, and Judge Harry A. Hollzer, United States District Judge, of Los Angeles.

These papers and the discussion presented from an important angle the salient features of the judicial administration problem. The Section is endeavoring to have them published so as to be available to the profession. The Section dinner was well attended, and the program included an able and instructive address on the subject of "The Supreme Court as the Balance Wheel of the Constitution," by Hon. James M. Beck, of Washington, D. C., an address by United States Circuit Judge William Denman, of San Francisco, on the subject of "Some Reminiscences in the Field of Judicial Notice," and by Mr. Sayre Macneil, of the Los Angeles Bar, giving some valuable suggestions as a Friend of the Courts.

Section on Legal Education Reports Progress

The report was received and filed, after which Mr. James Grafton Rogers, of Colorado, Chairman, presented the report of the Section of Legal Education and Admission to the Bar. The Advance program contained a printed report of the Council of the Section, reviewing its activities for the year in regard to the promulgation of the American Bar Association standards on the subject of legal education and of bar admission requirements, and he would refer only briefly to it for the purpose of bringing it up to date and add one or two minor details.

The report showed at the time it was written that 25 States had adopted the standards of the American Bar Association, and since that date the number had reached 26, so that now at least a substantial majority of the States of the Union are following with reasonable definiteness the standards recommended by this Association. This progress has been attained in about fourteen years, after practically a period of 140 years without any considerable motion toward improved standards for admission to the bar. There is a prospect that the United States may with substantial unanimity be enforcing the American Bar standards within a reasonable period.

The Council had admitted two schools to provisional approval, viz: the University of San Franciso School of Law and the Loyola College of Law at Los Angeles. California has a large number of law schools, several of them very high grade, and a large number of low grade ones. The State has not so far adopted the American Bar Association standards, and the Section was glad to see the schools themselves moving slowly towards their adoption. The Council had during the week held a hearing on the Louisiana State Law School, which had been placed on probation at the Washington meeting. Mr. Frederick Beutel, recently appointed Dean, appeared and showed that the school had pledged itself to the adoption of considerable improvement and enlargement of its activities. No action was taken with regard to the probation status of the school and the matter was adjourned until the meeting next May. Chairman Rogers explained that placing a school on a probation status did not immediately affect the standing of the school or its students but was intended as a warning that the Council was dissatisfied with conditions.

The Chairman had been instructed to lay two resolutions before the Association. One was a resolution relating to Bar Examinations on Legal Ethics, but as it was practically the same as that already adopted on recommendation of the Committee on Legal Ethics, he would only read it for the sake of the record. The other resolution was that "the American Bar Association approve the plan of character examination used by the National Conference of Bar Examiners to investigate the character and record of migrant attorneys applying for admission to various States on a comity basis and recommends the use of this investigation service by the several States." After a brief explanation of the plan, the motion was adopted.

At this point Mr. Arthur E. Briggs rose to protest against the reference to the existence of numerous low-grade law schools in California. "Our schools here," he said, "all of them, so far as I am aware, and I believe the requirement is essential to certification to the bar, have at least three years of work in law school, and some of them are required as part-time schools, that is evening schools or part-day and evening, to have at least four years of work for the students. In other words, the average in this State is about what our schools average up as 80 units of work. That is a rather high standard if you are looking simply at legal education." He also criticized the present standards for the rating of schools by the Association as arbitrary and called for the adoption of a better method.

Other Sections Present Reports

The report of the Section on Mineral Law was simply received and filed. It was signed by P. C. Spencer, Chairman, and stated that for the most part the attention of the Mineral Section and its various committees during the past year had been directed to a study of the Codes under the National Industrial Recovery Act and other proposed legislation designed to alleviate the present distress in the mineral industries, particularly coal and petroleum. The members agreed that as a result of such study they have a clearer understanding of the ramifications and complexities of the various problems involved. The Section could only report progress at this time. It had voted to continue its Committee on the Conservation of Mineral Resources and also existing sub-committees on coal, natural gas, oil, silver and copper, the members to be announced later by the Chairman.

The report of the Section of Patent, Trademark and Copyright Law was presented by Chairman Wilkinson of Chicago. During the past year the Section had continued its study of the patent and trademark laws and the various proposals for the revision thereof. However, it had not seemed desirable during the past year, in view of the great amount of legislation pending before Congress, to urge the passage of bills which had heretofore been proposed by the Section and approved by the Association.

The Section had held sessions during the week and had discussed reports of various committees. It had approved proposed amendments to the

Trademark Acts presented to it by its Committee on Trademarks as follows: That Section 2 of the Act of February 20, 1905, be amended by this addition—"Where the trademark is used for subsidiary or related companies the declaration shall so state and such use shall be deemed exclusive"; that Section 5 of the Act of 1905 be amended as to the so-called "ten year proviso"; that Section 10 of the same Act be amended so that a trademark may be assigned in connection with that part of the goodwill of the business in which it it used.

That Section B of the same Act, relating to the cancellation of registered trademarks, be amended by limiting the time for the filing of petitions for cancellation to five years from the date of registration unless the registered mark is calculated to deceive, in which case application for its cancellation may be made at any time; That Section 16 be amended to provide that registration of trademark under the act shall be notice of registration; that Section 1-b to Section 2 of the Trademark Act of 1920 be amended to eliminate the requirement under Section 1-b that the mark should have been in use for not less than one year prior to application for registration, and by omitting the word "exclusive" in the latter section.

The Section had adopted the recommendations of its Committee on Patent Law Revision that H. R. Bill 173, to provide counsel for the defense and prosecution of rights of indigent patentees, etc., be disapproved; that H. R. Bill 4523, relating to a registration in the Patent Office of all licenses or agreements relating to two or more patents, be disapproved; that H. R. Bill 383, providing for the granting of a compulsory license under patents, be disapproved; that H. R. Bill 5384 be approved in so far as it repeals that part of the Act of 1910, as amended in 1918, which compels all suits to be brought in the Court of Claims based upon patents alleged to be infringed by the manufacturer and sold to the U. S. Government.

The Section had also passed a resolution disapproving, in general, compulsory license laws, and, pursuant to the report of the Committee on Patent Law Revision, a resolution disapproving bills to revive expired patents or to postpone the expiration of "live" patents as against public policy. It had also adopted resolutions reaffirming its condemnation of the use of the word "Attorney" or "Lawyer" by solicitors of patents who are not members of the bar, and also a motion for the appointment of a public relations committee to act in conjunction with the various Patent Law Associations, and otherwise, in presenting to the public facts as to the value of the country of the U. S. patent system.

The report of the Section on Public Utility Law, which contained no recommendations for action, took the same course. It was signed by the retiring Chairman Harry J. Dunbaugh. The public utilities of the country, it stated, had been confronted with unusual problems during the past year, and a number of them had received intensive consideration by the Section. A standing committee of the Section had made a comprehensive survey and report as to developments during the year in the field of public utility law, under the direction of its Chairman, Harold J. Gallagher, of New York. Two Special Committees had presented two valuable reports: one on "The Developments in the Regulation of Highway Transportation in Relation to Railroads," and the other on "Developments in Federal and State Regulation of the Communication Utilities." The chairman of the first committee was Mr. Ivan Bowen of Minneapolis, and of the second, Prof. Edwin M. Borchard of Yale Law School. These reports had already been printed.

Committee on Administrative Law

Mr. Louis G. Caldwell, of Washington, D. C., next presented the report of the Committee on Administrative Law.

The report recalled that last year the Association had adopted a resolution authorizing the Committee to draft and urge the enactment of legislation, subject to approval of the Executive Committee, for the purpose of separating the judicial functions now exercised by Federal administrative agencies from their legislative and executive functions and placing them in a Federal administrative court, with appropriate branches and divisions, including an appellate division, but, failing that, in an appropriate number of independent tribunals, analogous to the Board of Tax Appeals.

After a number of formal and informal meetings, the Committee had reached an agreement on a detailed program for carrying out this idea. It merely represented a modest beginning and was confined to an attempt to set up a nucleus for an administrative court rather than a full-fledged institution such as might be found in operation in France. The details of this proposed administrative court would be found summarized in the March number of the Association Journal. The proposal was submitted to the Executive Committee at its meeting in Jacksonville last January, and that Committee had authorized a draft of a detailed bill carrying it out. Of course there was no intention of committing the Association to the bill until it had been submitted to it for its scrutiny and action.

However, opposition had arisen from within the Bar itself, particularly from lawyers practicing before various tribunals affected by the bill, and the Committee realized that in fairness there should be a further opportunity for discussion and debate. This had been afforded at the joint meeting of the Committee with the Judicial Section and the National Conference of Judicial Councils. The discussion showed that there would have to be further meetings and conferences, many of them perhaps, with representatives of the groups that had indicated their opposition.

The Committee was able to report good progress on certain proposals approved by the Association last year. A bill providing that rules and regulations, made in the exercise of legislative authority by executive or administrative officials, be made easily and readily available at some central office, had passed both House and Senate and had emerged from conference in such form as to make its enactment reasonably certain. Another bill, to put an end to interference with proceedings before administrative tribunals by members of Congress and government officials, had been introduced in the Senate by Senator Logan. The Executive Committee had authorized the Committee to support the bill. It had been reported out favor-

ably by the Senate Committee on the Judiciary but would not in all probability be passed at this session. However, it has made a good start.

The report was received and filed Mr. Stanley B. Houck, of Minnesota, Chairman, presented the report of the Committee on Unauthorized Practice of Law. The Committee was making its fifth annual report and closing the fifth year of its activity. Most of the work of taking steps to eliminate the evils in local practice fell necessarily on the committees of the State and Local Bar Associations. They are the ones who contact the individuals, work out local agreements and conduct litigation where deemed necessary. The Association's committee could do none of these things, but it had tried to be leaders in thought and to help the local committees to perform their necessarily local functions. These committees were looking to the Association's Committee for guidance, suggestions and help and it had been giving them the things they seemed to need.

Chairman Houck referred to the "Unauthorized Practice News," published under the auspices of the committee, and the success it has achieved. It could be secured by any member of the Association who cared to send his name to headquarters and request it. He concluded by speaking of the unlawful practice of law by lawyers as the most serious part of the problem. Unlawful practice could not exist anywhere without the cooperation of lawyers. The committee was asking the local associations to give more attention to this phase of the situation from now on. As the report contained no recommendation for action, it was received and filed.

A Little Protest Against Journalistic Misunderstanding

Mr. Charles M. Hay, of Missouri, rose to call attention to a headline in the morning papers which, as he said, "gives the general public the impression that all lawyers are crooked, and that the primary purpose of the Association in foregathering once a year is to make a superhuman effort to rid the public of the affliction of a lot of rascals in the legal profession. I am in entire accord with all the movements to establish a high standard of professional ethics and to get rid of the delinquents in our profession, but I pray for the day to come when there may be an annual meeting of the American Bar Association devoted to exploiting the honesty and integrity and high public service and standards of the legal profession. Let us rid ourselves of the crooks by less brass band performances in advertising the delinquencies of members of the profession."

Chairman Houck thought it well to emphasize the fact the real objective of the movement against the unlawful practice of law was the improvement of the administration of justice generally and the protection, not of the legal profession, but of the public. The Committee had been endeavoring, with no little success, to make this fact clear to the public.

Mr. John Kirkland Clark thought the point might be driven home with a clear illustration of what the work of such committees actually accomplishes and some of the situations which arise. He then gave the details of a case which had arisen in New York, now about to be presented to court,

MRS. EDNA COVERT PLUMMER
Chairman, Women's Committee

where a trust company was consulted by an old lady who wanted to have the company draw her will. The case amply supported the Committee's views and purposes. Mr. Clark concluded by saying that a specific illustration like that would make people realize that the movement was something for their benefit and not in the interest of the lawyers.

The meeting was then declared adjourned.

Meeting Resolves Itself into Conference on Better Integration of the Bar, Discusses Plans and Makes Recommendations to Committee, General Council and Executive Committee

PRESIDENT SCOTT M. LOFTIN presided at the fifth session, held in the Biltmore Theatre. The first order of business was the presentation of a supplemental report from the Executive Committee by Secretary MacCracken. It read as follows:

"To the American Bar Association:

"In the report of the Executive Committee submitted to you at the first session, you were informed that a supplemental report would be sub-

mitted later during this Annual Meeting on the subject of the resolution adopted at the last annual meeting, upon the recommendation of the General Council, providing for the study of a special committee of Federal legislation and policies as affecting the liberties and rights of American citizens.

"The Executive Committee now reports that no report has been received from the special committee. The Executive Committee this morning advised the General Council of the Association of this fact and the General Council adopted and transmitted to the Executive committee the following resolution:

"Resolved, That this matter be referred back to the Executive Committee with the recommendation that the Special Committee be continued and directed to report not later than November 1st next to the Executive Committee and that this report be considered at a joint meeting of the Executive Committee and the General Council.

"The Executive Committee has approved the foregoing resolution of the General Council and now submits it to the Association with the recommendation that the action of the General Council and the Executive Committee be approved.

Respectfully submitted,
SCOTT M. LOFTIN, President."

The report was approved, after which President Loftin presented Hon. Silas H. Strawn, of Chicago, former President of the Association, who presided during the remainder of the session. He stated that the Secretary had another supplemental report from the Executive Committee to present. Secretary MacCracken thereupon read it.

It merely stated that proposed amendments to the Constitution and By-Laws of the Association, dealing with the method of nominating and electing officers and members of the Executive Committee had been submitted to the Executive Committee. The matter had been referred to the General Council and to a subcommittee of the Executive Committee on Amendments to the Constitution and By-Laws, with directions to study the questions involved and report to a meeting of the General Council and the Executive Committee to be held during the ensuing year. As the report was merely informative no action was required.

Mr. E. Smythe Gambrell, of Georgia, presented the report of the Committee on Aeronautical Law, in the absence of Chairman John C. Cooper, of New York. The Committee had been considerably interested in the past two years in working with and advising a similar committee of the Conference of Commissioners on Uniform State Laws. At a joint meeting between the Conference Special Committee and the Association Committee some eighteen months ago it was decided that the Conference Committee on Aeronautical Law would attempt to write a uniform Aeronautical Code to be divided into three parts. The first was to be an Act to be known as the Regulatory Act, having to do with the regulation and policing of flying, the licensing of equipment, and the second an Act relating to the establishment and maintenance of airports.

He was happy to state that after considerable work the Conference sub-committee had finished the first two Acts and that they had been submitted to the Association for approval. The third and final Act of the Code was to be an Act dealing with the substantive side of aviation—for instance, relating to the liability between a passenger or a shipper and a carrier, between third parties and carriers. That was a rather heavy undertaking and the Committee and the Conference Committee felt that it might require one or two years to complete that proposed act in order that it might be recommended for adoption by the various states.

The Committee had felt it highly desirable to study the international aspects of aviation and, in view of the suggestions recently that this government ratify the Paris Convention of 1919, dealing with international flight, it had felt called on to consider the constitutional aspects of the question and whether or not, under our Constitution, the Senate of this country might properly adopt or ratify that Convention, which not only states the fundamental principles of international flight, that is, relating to the public aspects of flight, but also provides for a permanent body with authority to write annexes and rules and regulations binding upon the various governments party to that Convention. It had appended to the report quite a lengthy list of decided cases.

There being no recommendations, the report was simply received. Hon. James M. Beck, Chairman of the Committee on American Citizenship, was then recognized to present its report.

James M. Beck Presents Report of Committee on American Citizenship

Chairman Beck said he was always at a loss to know what was expected of a Chairman who was to present the report of a committee which was already in print. However, he would avail himself of the opportunity to make one or two suggestions that were not in the report.

In the first place, in view of the very critical nature of the times and the unquestioned constitutional crisis through which this country would probably pass in the next ten years—he would say ten years, because constitutional battles are not won or lost in a single year—the Committee would probably assume a very large importance. He would suggest not merely that the committee be given a different name, such as "Committee on Constitutional Government," or some such title, but that it should be very much enlarged, so that it would be a committee of ten, one from each judicial circuit, who would give very serious consideration as to just what the Bar Association, without in any respect implicating itself in the current political controversies of the day, could do to insure respect for the fundamental law. That, of course, was a mere suggestion that he made on his own initiative, and he thought it was one that the Executive Council in due time would consider.

The second suggestion was this: There was a reference in the report to the fact that in 1937 we will celebrate the 150th anniversary of the Constitution of the United States. There had been a bill in the last Congress and in the preceding Congress that the President should appoint a commmittee of five members, the Vice-President of the Senate five, the Speaker of the House five, and that this Commission of Fifteen should have the duty of preparing the plan and scope of an adequate celebration of this

SCOTT M. LOFTIN

WHO PRESIDED AT ANNUAL MEETING IN LOS ANGELES

very important milestone in the history of the American people. The bill had passed the House, not only in the two preceding sessions but in the present session, but it had not, in some way, ever gotten out of the Judiciary Committee of the Senate. A great many representations had been made to that committee that it should be brought up, but for some reason that was beyond his comprehension there was either a lack of interest in it or there might be some latent, because it certainly was not a disclosed, opposition to it.

For that reason, if any members present had any influence with Senator Ashurst, the Chairman of the Senate Judiciary Committee, they would do a real service if they wrote him and urged him to bring up that matter before the committee on its merits. If this Congress suddenly adjourned and the matter had to be reintroduced into the next Congress, it was quite obvious that such a celebration as the dignity of the event seems imperatively to require would be quite impossible, or at least would be difficult, within the time remaining.

Chairman Beck also recommended an adequate celebration next year of the centennial anniversary of James Madison's death as a curtain raiser to the greater celebration. After paying a tribute to Madison for the great part he had played in formulating the Constitution, he took up the question of the teaching of the Constitution in the colleges and universities of the land. A summary of the replies to the Committee's questionnaire on this subject had been sent to the Presidents of these institutions, and letters had been received which were, almost without exception, extremely gratifying. There was a marked crescendo of interest in the subject of a broader education in the Constitution.

He was confident that they were deeply thinking of the matter, of course in varying degrees, but naturally there was the inertia that goes with any institution that has been founded for many years and which has complex problems. He did not think that mere correspondence would get very far in actualizing the undoubted sentiment now in the colleges and universities of the country to make the study of the Constitution a major feature of their curriculum, but was convinced that the work must be taken up by more direct contact and conference with college presidents and college professors."

There was but one other subject to which he could address himself in the brief time remaining. It was one of a great deal of delicacy and he hoped it would not be misinterpreted. We might be very successful in enlarging the study of the Constitution in colleges and universities, but the question still remained, how was it going to be taught? If it was taught in a manner that did not accord with the political traditions of America and with the accepted ideas of constitutional law, it might be infinitely better that the youthful mind of the undergraduate were not instructed at all.

Chairman Beck developed this idea interestingly and convincingly. He concluded by saying that among many men in all parts of the country he had been given some credit as a defender of the Constitution. He coveted no higher distinction. He was liberally applauded at the conclusion of his remarks.

Report from the Conference of Bar Association Delegates

Chairman Strawn recognized Mr. E. Smythe Gambrell, who presented the report of the Conference of Bar Association Delegates. The reports of the various standing committees of the Conference had been printed and were available to anyone who wished to study them. The report of the Committee on Cooperation between the Press and the Bar, of which Mr. Giles J. Patterson was chairman, among other things deplored the disposition of some court officials and some lawyers engaged in litigation to assume the role of press agent in building up litigated cases into sensational spectacles, designed to satisfy the public appetite for that kind of news.

The report of the Committee on Judicial Selection had been made by Hon. John Perry Wood, of Los Angeles, who said that a great deal of the material on this subject that had been developed by discussions in the Conference in recent years had been utilized in the forty-odd Legislatures that were in session this year, and that in more than one State the plans evolved by these discussions had been at least in part adopted for trial. The report on the Rule-making Power was by Mr. Frank W. Grinnell, of Boston, who unfortunately was absent, and that on State and Local Bar Activities by Mr. Morris Mitchell of Minneapolis. In connection with that report, Mr. R. Allan Stephens, Secretary of the Illinois State Bar Association, had delivered an extremely informative address on the ways and means of conducting a useful local or State Bar Association, and enlisting the activities of the eighty per cent of the membership who usually take no part in the Association's work. Mr. Carl V. Essery, of Detroit, had made the report on State Bar Integration, mentioning the two or three new States that have fallen into line for the incorporation of the Bar during the present year.

At the afternoon session Mr. Philip J. Wickser, of Buffalo, New York, had made a report as Chairman of the Committee on Bar Reorganization. The Conference, in adopting the report, adopted these recommendations: Continuation of the Committee for Cooperation with the Special Committee on Coordination of the Bar Association; continuation of the National Bar Program, and the development of improved and enlarged service to the members of the Association and all associations which shall unite upon a common plan of coordination; adoption by the Conference of the principle of closer and more representative organization by the Bar Associations of the country, and the development of the American Bar Association in such a way as to bring about such an organization; the calling of a national conference to perfect plans for the better organization of the profession nationally under the leadership and direction of the American Bar Association.

Conference on "Better Organization of the Bar"

At this point Chairman Strawn announced that they had now come to the discussion of a subject of vital interest to every member of the Association, and one which had received the careful consideration of a very capable committee during the past year. He was taking the liberty of calling to the Chair one who had devoted himself most assiduously and ably to a study of the problem for many

years. He was asking Mr. Harry S. Knight, of Pennsylvania, to preside during the discussion of the topic. After disposing of some preliminary routine business, Chairman Knight stated that the order of business until the end of the Conference was "The Better Organization of the Bar." In order that it might be thoroughly understood that the meeting was a Conference, more in the nature of a Committee on the Whole, he would ask the Secretary to read the report of the Executive Committee as to its parliamentary status. Secretary MacCracken did so, after which Chairman Knight said:

"When each year has passed there has been a general feeling among the lawyers that there should be some better, more concrete organization of the lawyers throughout the land. That has been echoing through the States until it has become quite articulate in the corridors of the Biltmore Hotel during the past week. The Coordination Committee has made a report which you will find on page 200 of the Advance Program, or find in the pamphlet which was passed at the door, laying before this conference four suggested plans as to how better coordination may be effected.

"The Coordination Committee does not recommend any of these plans. It does not necessarily endorse any of these plans. They are submitted to this Conference for the purpose of provoking thought and discussion, with the hope that the suggestions therein and the criticisms and suggestions here made may be the means of evolving during the coming winter a crystallized plan for the better organization of the bar, that will eventually give the members of the American Bar Association a more active and definite part in the administration of the Association, and that will link the State Bar Association more closely to the American Bar Association.

"It is for this purpose that these reports are laid before you and it is for this purpose that this discussion is to be had this afternoon. Before entering upon it, let me call your attention to two things which in my mind are vital to any undertaking along this line. The first is that the American Bar Association now includes only sixteen per cent of the lawyers of the United States, and that only about ten per cent of that sixteen per cent, on an average, attend these meetings of the American Bar Association, and it would probably be safe to say that ten per cent of that ten per cent of that sixteen per cent are the people who are more or less active in the workings of the Association, not particularly because they want to monopolize those activities, but because they are doing the things which others are not too eager to assist in doing. I am quite sure that that small percentage would always and at all times welcome the assistance of others in doing this work.

"Keeping in mind that thought of the small percentage in activity and the second thought, that in order that we may have a more perfect organization of the lawyers of this country it is necessary to enlist the interest of the lawyers in Bar Association activities, we can envisage the problem clearly. Without that interest we can do little or nothing. With that interest, in the light of what the sixteen per cent has accomplished, I believe our activities for good are almost unlimited. I will now call upon Mr. Jefferson P. Chandler, the Chairman of the Coordination Committee, who has given much thought and study to this subject, to present the report, or an analysis of it, and also to present views on the coordination plan."

Chairman Chandler Opens the Ball

Mr. Chandler then delivered his address, interpolating an explanation of the four plans suggested for discussion in the Committee's report. It is printed elsewhere in this issue, along with the other addresses on the program of the Conference. Mr. Walter P. Armstrong, of Tennessee, followed with a strong demand for action, and after him came Mr. Carl B. Rix, of Wisconsin, with a concrete plan for achieving a better bar organization. Dean Charles E. Clark of Yale University Law School followed with a declaration in favor of the Committee's fourth suggested plan—for complete integration of local, State and National Bar Associations, welded into one comprehensive whole through a representative and delegate system of government.

Hon. Earle W. Evans, of Kansas, followed with a plea for the adoption of a program, at this early stage of coordination development, which would carry along with it an increasing number of the members of the Bar and antagonize the fewest. Hon. Harry P. Lawther, of Texas, speaking extempore, stressed the need for an organic connection of the Bar Associations and concluded by offering the following resolution:

"Be it Resolved that the Special Committee on Coordination, in conjunction with the Executive Committee of this Association, be instructed to prepare such amendments to the Constitution and By-Laws of this Association as will provide for an organic connection between the American and the several State and local Bar Associations, and that said Committee take the proper steps to have such amendments prepared for consideration of this Association at its next Annual Meeting."

Mr. Robert Stone, of Kansas, favored the resolution, with the insertion of the "General Council" as one of the bodies instructed to prepare the amendments. It was contemplated, he said, that there should be a mid-year meeting of the General Council and the Executive Committee, at which the Committee on Coordination would present all its plans for consideration and the working out of a suitable plan. Judge Crump, of Los Angeles, spoke in favor of the amendment.

The amendment was adopted, after which Mr. Lawther's resolution, as amended, was passed. The Chair then called on the next speaker, Hon. Frank E. Atwood, of Missouri, who spoke on the legal as well as practical justification of better organization of the Bar by judicial order. He was followed by Hon. James Grafton Rogers, of Colorado, who declared that all that could be accomplished at the Conference had been accomplished by the general resolution of instructions to prepare and submit a plan, which had just been adopted. He was confident that a plan could be worked out which would meet with the Association's approval next year.

Chairman Knight then called attention once more to the Executive Committee's report, which stated that any votes taken in the Conference would be regarded as expressing the sentiment of that body and would receive careful and fair consideration on their merits by all who were dealing with the subject, and he took it that that meant the General Council as well as the Executive Committee and the Coordination Committee. He then

J. WESTON ALLEN
MASSACHUSETTS
FIRST U.S. JUDICIAL CIRCUIT
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FORNEY JOHNSTON
ALABAMA
FIFTH U.S. JUDICIAL CIRCUIT
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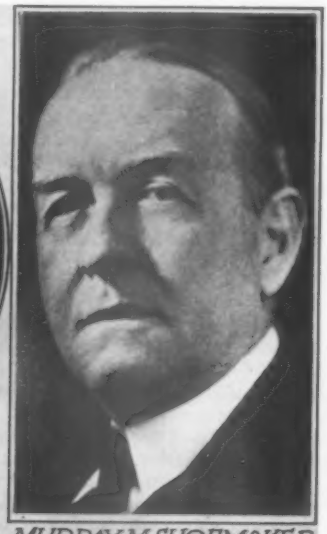

MURRAY M. SHOEMAKER
OHIO
SIXTH U.S. JUDICIAL CIRCUIT
Bachrach Photo

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THIRD U.S. JUDICIAL CIRCUIT
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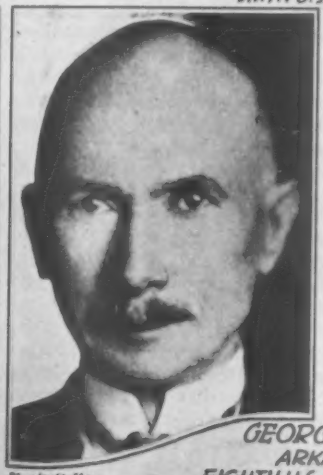

GEORGE B. ROSE
ARKANSAS
EIGHTH U.S. JUDICIAL CIRCUIT
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CLAIRE B. BIRD
WISCONSIN
SEVENTH U.S. JUDICIAL CIRCUIT

CASSIUS E. GATES
WASHINGTON
NINTH U.S. JUDICIAL CIRCUIT
James E. Merrihew Photo

JAMES R. KEATON
OKLAHOMA
TENTH U.S. JUDICIAL CIRCUIT

stated that the Conference would be glad to hear from anyone present who had not been scheduled to speak, especially someone representing a State Association.

Mr. Mitchell Presents the Minnesota Bar's Ideas

Mr. Morris B. Mitchell, of Minnesota, stated that he had been sent as a representative of the Bar Association of that State. That Association had appointed a Committee to study the possibility of coordinating all the State Bar Association's into one federated unit, and it had reported that the American Bar Association, as at present constituted, was not adequate to act and speak for the American Bar for the following reasons:

"In the first place, it numbers among its members less than one-sixth of the lawyers of the country, and under its present form of organization it probably can never hope to enroll a majority of the lawyers. In the second place, it is governed ultimately by annual assemblies which are not representative in character and are too large and cumbersome for efficient action. Although every member has a right to attend and vote, about one-third of the membership in attendance each year is drawn from the place at which the meeting is held. Third, the American Bar Association is wholly lacking in coordination or cooperative relationship with state or local associations.

"Our committee," Mr. Mitchell continued, "recommended that while the ideal form of bar association would be a complete, all-inclusive federation of local, State, and national associations, similar to that of the American Medical Association, still there are practical difficulties in the way of achieving that result which must be recognized. The committee considered these difficulties, among which was the lack of interest on the part of State and local Bar Associations, and came to the conclusion that the goal could not be reached in one jump. We must be satisfied with a modest beginning.

"We felt that a movement should be started with a few concrete proposals, and these are the proposals which our committee recommended to the American Bar Association: First, that the State Bar Association elect, or at least participate in the election of, the members of the General Council of the American Bar Association. We propose three alternative provisions for the consideration of the Association: First, that members of the present General Council be elected by State Bar Associations exclusively; or, second, that the number of members of the General Council be increased to two for each state, one to be elected as at present, by the American Bar Association, and the other by the State Association in each State. Or, as a third alternative, and this is the one that I would prefer personally, that the membership of the General Council be increased and pro-rated among the States on the basis of membership in the American Bar Association, and be elected by the State Associations.

"This would have the advantage of giving the State with the largest number of members of the American Bar Association the greatest amount of representation in the General Council and would tend to cause each Association to try to increase the number of members of the American Bar Association in its State. These are merely suggestions. It is our idea of a starting point. I am entirely in accord with the suggestions that were made by Judge Lawther and the other gentlemen who spoke in favor of the House of Delegates, and I speak for our Association in saying that. I do want to suggest this, that each of you delegates from the State Associations, when you go home, recommend to your own Association that they create a committee to study this question and to keep you informed about it.

Mr. Arthur E. Briggs, of California, spoke of the functions of a Bar Association and the various agencies which exercise them. He was in favor of a democratic and representative mode of choosing the governing body, the development of what he called the "thought-organization" along with the "will-organization" of the national association, with a guarantee of the freedom of the former, and for a control of the general policies by the membership, by referendum where necessary.

"If we do that" he continued, "we shall at least do something toward relieving the body as a whole of the criticism which has been so freely directed against it—that it has become somewhat inbred, that it fails to represent the members themselves. If the members are to have a voice, they will become aware that they are a part of the organization."

Mr. Hay Urges Selection of General Council Members by State Bar Associations

Mr. Charles M. Hay, of Missouri, stated that he thought the gentleman from Minnesota and the Association back of him had put their fingers on the crux of the whole problem—the necessity of developing, as the governing body of the Association, a group truly representative of the lawyers of the country. He thought the General Council and the Executive Committee ought to consider the development of a plan which will enable the various State Bar Associations to select the representative of the State upon the General Council of the Association. That was all the more important, in his judgment, since the Association, through its General Council and Executive Committee, was presuming to pass upon matters of vital national policy.

Something had been said earlier in the afternoon about lawyers losing the respect of the people. There were two main reasons for that, in his judgment. He had commented on one of them in the morning, and that was the fact that we specialize in our association in helping Will Rogers and others Advertise the delinquencies of our own profession. The second was that the Bar of America had become all too conservative in its attitude toward the progressive changes in social and economic conditions. He was therefore for a more representative Bar.

Mr. Monte Appel, of Washington, D. C., stated that in response to the invitation of the Association, some 225 delegates of the State and local Bar Associations had assembled Monday and passed a resolution on the subject under discussion by an overwhelming vote. The meeting had been held for the purpose of considering ways and means of coordinating the activities of the American Bar Association with those of the State and local Associations. It had seemed to those present that they should recognize a widespread and deep-seated con-

viction on the part of a substantial number of the members of the American Bar Association that the rank and file do not have that voice in the election of its officers or the conduct of its affairs which they should have. They felt that the coordination movement, to be successful, must offer to the lawyers of the country as large a measure of personal participation as is feasible. They had therefore passed a resolution, which he offered, as follows:

"RESOLVED, That it be the sense of this meeting that in addition to the four plans set out in the report of the Special Committee on Coordination of the Bar, a fifth plan as follows should be carefully considered:

"PLAN FIVE

"Decentralization of the power of the American Bar Association now lodged in the Executive Committee and the Council, and a further decentralization of the machinery of the Association to the end that the individual member may have a more direct voice in the selection of officers and the determination of questions of important policy.

"This plan contemplates nomination of the Association's officers by a representative body and their election by a ballot taken by mail in which each member of the Association shall have one vote.

"It also contemplates the use of some sort of a referendum of all members of the Association on questions of important policy."

The ballot by mail had been successfully used by the Illinois State Bar Association, and while they were not prepared to commit themselves to it, it seemed that a method which had helped to vitalize a great State Bar Association should receive at least serious consideration as an instrument for adoption by the Association. With reference to the referendum, they were not unaware that that was possible under existing machinery and that it had already been used, and it seemed to them that it might be well to consider a more extensive use of that machinery. He moved the adoption of the resolution as the expression of the sense of this meeting, and the motion was seconded.

Mr. George H. Wilson, of Illinois, stated that the members of the Conference appreciated the fairness of the Executive Committee, and the officers of that body in throwing this matter open so that the various questions which the members of the association had in mind might be fully ventilated and a vote be taken to determine their sentiment. He had felt, and he thought the members of the Association had felt for a long time, that the individual members of the Association should have more of a voice in the organization. In Illinois they had had the same difficulty, and it was thought that there was a coterie in Illinois—and he was free to confess that he was one of that body—that was controlling too closely the organization and the election of officers. And so, in Illinois, they had amended their Constitution so as to provide that twenty members could nominate candidates from the President down, and that vote might be given by mail or in person, if the members attended the annual meeting of the organization. This had greatly increased the interest in the organization. It had increased the attendance at the annual meeting, and in a body of several thousand members, when there was no contest, there were over a thousand votes cast in Illinois. He felt the resolution should be adopted as the sense of the meeting.

Mr. George M. Morris, of Washington, D. C., as a member of the General Council and a member of the committee working on the coordination job in company with the regular committee, desired very heartily to endorse the resolution of Mr. Appel, seconded by Mr. Wilson, as one of the plans or suggestions to be considered by the committee when it goes forward with its work. The motion was adopted.

Mr. John Kirkland Clark, of New York, said that it seemed to him that it would be only fair for the Conference to express itself on the suggestion of representative voting on the Council which had been made, so that there would not persist, as we have it today and have had it in the past, the likelihood that the Canal Zone, Alaska, and the Philippine Islands would choose our officers, as had been the case at least once in the years that he had known of the elections of officers. He presented the following resolution:

"Resolved That this Conference recommend some degree of proportionate representation in the integration of state and local organizations in this Association."

Mr. Robert Stone, of Kansas, wished to point out that possibly the large metropolitan centers would control, if a proportionate representation were adopted. Perhaps they should; he was not sure. But certainly it would be unfortunate for the Bar Association if that were done, to the exclusion of our more rural communities. If this was understood merely as a suggestion, he had no objection to it. If it could be considered as an instruction, he would oppose it.

Chairman Knight stated that it was not an instruction, but a request that the matter be considered, as all the resolutions were.

Mr. Barnett E. Marks, of Arizona, believed that the same argument could be made against this method of consolidation as was made in the days of the forming of the Constitution. Those in his State would be sadly outnumbered. They would not get that representation which they were justly entitled to. Instead of moving toward a genuine coordination between the various State Bars, they would succeed beautifully in defeating it by adopting a representation based on membership. It was better to give the State Bars equal representation, whether two or four or whatever the number may be. He feared an expression by the Conference that this method was favored might in some measure defeat the purposes of the meeting.

Mr. W. F. Mason, of South Dakota, said that he came from a small State, which has generally a small attendance at the Annual Meeting. They get together and elect the member of the General Council. He felt that it was eminently fair that there should be some degree of proportionate representation. The eleven of them present from South Dakota were not entitled on the General Council to as much representation as the delegates from the State of Illinois or the State of New York. He thought that there should be some representation from every State, but the Gentleman, he noticed, in stating this, said "some degree of proportionate representation." In these proposals to make the organization more democratic, it seemed to him that gentlemen overlooked practical difficulties.

Mr. Clark's resolution was put to a vote and adopted. Mr. Joseph M. Cormack, of California, then moved that the Conference approve in principle Plan Number Four, proposed by the Special Committee on Coordination. The motion was adopted. Mr. George Maurice Morris, of Washing-

ton, D. C., then presented the following resolution, which was adopted:

RESOLVED, That at the meeting contemplated to be held during the ensuing year to consider plans for coordination of the bar, the following, among other persons and organizations, be invited to attend:

1. Chairmen of all Sections of the American Bar Association.
2. All delegates to the Conference of Bar Association Delegates.
3. Representatives of the Junior Bar Conference, together with similar organizations of that character within the American Bar Association and sister national legal associations and organizations of that character.

Chairman Knight then stated it was necessary to bring the Conference to a close. He thereupon turned the gavel back to Hon. Silas H. Strawn, who presided for the remainder of the session. The Chairman of the Committee on the Model Code of Criminal Procedure was not present, but the report had been already printed. Mr. Kimpton Ellis, of Los Angeles, presented the report of the Committee on Legal Aid. He stressed the importance of this work and the responsibility of the legal profession for it. In fact, the chief support of these legal aid agencies should come from the profession, but it would receive its reward in the satisfaction of having met its responsibility; in the relief from the burden that would fall upon it if such cases could not be referred to such agency, and in improved public relations. He wished to call special attention to a development which meant much in the way of legal aid and also for the one who rendered it. He referred to the Law School Legal Aid Clinic. The report had been printed in the Advance Program, and he moved its adoption. Carried.

Mr. Samuel Marcus, of New York, spoke of an experiment by the Bar Association of the City of New York, the New York County Lawyers' Association, and the Legal Aid Society of New York. A paid attorney and investigator were placed in a number of magistrates' courts, and proper cases referred to them. The organizations referred to had done this because they had come to the conclusion that a volunteer service did not give proper representation. As a result of that experiment, a report will be made that the plan be continued. The only thing that is deferring it is lack of funds.

Several other Committee reports were called for, but the chairmen were not present. Mr. William S. Culbertson, of Washington, D. C., then presented the report of the Committee on Facilities of the Law Library of Congress, in the absence of Chairman James Murdock. He called attention to the general resolution in the Committee's report as printed in the Advance Program. It was that the Association favored the continued development of the Law Library, to the end that it might become the nation's principal depository of legal literature and sources for research, and that it also favored the establishment in the Library of a Chair of Criminal Law and Criminology to administer and interpret the collection on that subject. The resolution was adopted.

Resolution as to Use of Justice Holmes Legacy

Mr. Culbertson then presented a supplemental report for the same Committee. It related to House Joint Resolution 237, which had passed the House unanimously and had been reported favorably by the Judiciary Committee of the Senate. It establishes a trust fund to be known as the Oliver Wendell Holmes Memorial Fund. It would be recalled that the late Justice left his property to the United States as the residuary legatee and that unless action was taken the fund would be converted into the miscellaneous assets of the Treasury. He left his private library to the Library of Congress and it had seemed fitting to the Committee that its proposal should receive the indorsement of the Association. The resolution read as follows:

RESOLVED, that the American Bar Association favors House Joint Resolution 237, which passed the House of Representatives unanimously on June 15 and has been reported favorably by the Judiciary Committee of the Senate.

The House Joint Resolution referred to, after various whereases, reads:

RESOLVED, By the Senate and House of Representatives of the United States of America in Congress assembled,

That the residuary fund from the estate of the late Oliver Wendell Holmes be received by the Treasurer of the United States and immediately credited to the Library of Congress Trust Fund Board, as a special fund to be known as the "Oliver Wendell Holmes Memorial Fund," and to be administered in accordance with section 1 of the Act of March 3, 1935 (2 U. S. C. 157), creating such Trust Fund Board. The income of this fund shall be used for the purpose of building up and maintaining a collection of works on jurisprudence in the law department of the Library of Congress to be known as the Oliver Wendell Holmes Collection.

Mr. George M. Morris, of Washington, D. C., said: "In rising to second that resolution, I do so to some extent as the representative of the delegation of the District of Columbia on the General Council. That delegation unanimously indorsed this resolution yesterday, and I am happy to move for its adoption." The motion was carried.

The last report on the program for the session was that of the Committee to Further the Acquisition of Portraits of the Former Associate Justices of the United States Supreme Court. Chairman Strawn stated that the report had been printed in the Advance Program and made no recommendation. He happened to know that Judge Ransom, the Chairman, had given consistent and effective consideration to the project of obtaining sufficient funds to purchase these portraits. The report was received and filed.

Stirring Scene as Nomination of Candidate for President Is Made from Floor—William L. Ransom Wins Over Hon. James M. Beck —Reports, Etc.

FORMER President Clarence E. Martin, of West Virginia, presided at the seventh session.

Mr. A. B. Andrews, of North Carolina, Chairman, presented a resolution that the Special Committee on Judicial Salaries be continued for another year, the membership to be named by the incoming President. The motion was adopted.

Chairman Everett, of the Committee on Jurisprudence and Law Reform, was not present, but the

report had been printed and, on the motion of Mr. Silas H. Strawn of Illinois, the recommendations therein were taken up. These were: That the Association oppose the enactment into law of H. R. 33, or any other similar proposed legislation having for its purpose increasing the jurisdictional minimum in the Federal courts to $10,000 exclusive of interest and costs; that the Association oppose the enactment of S. 2524, as to transfers of the place of trial of suits in the Federal courts; that the Association oppose the enactment of H. R. 2763 to compel government officials, departments, etc., to give full faith and credit to decrees, judgments, etc., of State courts of record; that the Association disapprove the adoption of H. J. R. 34, or any similar resolution to change the methods of amending the Constitution of the United States.

Mr. Strawn stated that these had already been submitted before in substance at previous meetings and were practically reiterations of positions heretofore taken by the Association. They were all approved.

Mr. John W. Guider, of Washington, D. C., presented the report of the Committee on Communications. He stated that it has been printed in the Advance Program and that the Committee had nothing to add to it at this time except to explain the resolutions offered. It was possible that proposals of far-reaching character would be made in Congress, and possibly passed before an opportunity would be had to submit them to the membership of the Association, and the Committee therefore sought authority, such as was granted to it last year, to make representations to Committees of Congress or various appropriate bodies on any legislation that might be proposed, but only after approval of the specific matter by the Executive Committee. On vote, the resolution was adopted.

Mr. Guider then presented another resolution, authorizing the Committee on Communications to represent the Association at national conferences and congresses dealing with matters within its field in the role of observer, but without expense to the Association. The motion was adopted.

Committee on Commerce Recommendations Adopted

The report of the Committee on Commerce was presented by Mr. Robert B. Tunstall, of Virginia, in the absence of Chairman Butler of Illinois. The report has been printed in the Advance Program and he would simply submit the recommendations, and explain them as he went along.

The first two recommendations had to do with rules for the carriage of goods by sea. Last spring the Senate had rather unexpectedly ratified the Hague convention. The position of the Association theretofore had been that the association of the United States with the Hague rules would be rather by an act of legislation than through the ratification of the convention, or at least that, if there were ratification, it should be done by a resolution containing reservations that would enable the United States to insist upon such special positions as were characteristic of our jurisprudence touching such matters, and that it should not be left in the position of having to seek to modify the treaty to secure these changes.

The recommendations which he proposed to submit were drafted by the Executive Committee at its meeting in Washington. They were, first, that the Association reaffirm its position taken in 1927 that The Hague Rules should be put into effect in the United States by legislation and not by treaty; and that the American Bar Association favored the adoption of The Hague Rules by the following program: First, the reconsideration and rescission by the United States Senate of its ratification of the treaty involving The Hague Rules; federal legislation putting The Hague Rules into effect in this country by statute; and, third reratification of the treaty with reservations embodying the legislative provisions. The resolutions were adopted.

Mr. Tunstall stated that the next group of recommendations were occasioned by the report of the Federal Coordinator of Transportation. For the first time in the history of the country an officer had been created with the principal statutory duty of making comprehensive recommendations with respect to transportation. The Committee's recommendations extended, however, to only three of his proposals.

The first had to do with motor transportation and was in line with the views of the Coordinator himself, the Interstate Commerce Commission and other bodies. It was "Resolved that the American Bar Association approves in principle S. 1629 of the Seventy-Fourth Congress providing for the regulation of motor carriers and recommends its adoption, with such amendments not affecting its fundamental provisions as the hearings thereon may show to be proper."

This resolution was adopted, after which Mr. Tunstall presented one dealing with corresponding legislation affecting water transport. It was that the American Bar Association "approves the principle of water carrier regulation along the general lines set forth in the bill providing therefor (S. 1632) but because of lack of information makes no recommendation concerning the detailed provisions of the bill." The resolution was adopted with an amendment that the resolution was not to be understood as extending to water carriers in foreign commerce.

The third resolution presented was "that the American Bar Association recommends the enactment of H. R. 3263 of the Seventy-fourth Congress providing for the restoration of Section 4 of the Interstate Commerce Act to the form in which it was prior to the effective date of the Mann-Elkins amendment of June 18, 1910." Mr. Tunstall explained that the effect of this recommendation of the Committee was to go back to the provisions as they existed prior to the Act of 1910, which would leave with the Interstate Commerce Commission ultimate control over long and short-haul questions, but would relieve the carriers of the obligation of making advance application to the Interstate Commerce Commission in every such case. The recommendation was concurred in by the Association of American Railroads and the National Industrial Traffic League representing the shippers. The resolution was adopted.

The next resolution related to the Food and Drug Legislation now on the statute books, declaring it wholly inadequate to present-day needs and calling for it to be strengthened in the public

interest and making certain specific recommendations for change. The resolution was adopted.

Mr. Tunstall stated that the next and final group of recommendation dealt with the aftermath of the NRA. The first was that the American Bar Association favored legislation "conferring jurisdiction upon a Federal administrative agency to pass in advance on cooperative trade agreements between two or more persons," and "granting immunity from the anti-trust laws to parties to such of those agreements as are not disapproved."

This was adopted, whereupon Mr. Tunstall presented another one, which he stated was an effort to meet the two major points in the Schechter case, in that it provided for the definition by Congress of appropriate standards and was confined in its operation wholly to interstate commerce. It was that the American Bar Association favored the enactment of legislation "conferring jurisdiction upon such a Federal administrative agency by appropriate legislative provisions containing adequate standards to hold hearings, take testimony, find facts, and report conclusions as to whether specific trade practices peculiar to an industrial group are within the provisions of the statute," and "providing an effective remedy safeguarded by adequate judicial review whereby the observance of such findings may be required of all members of the particular group of industry involved."

This resolution was adopted, as was also another one "authorizing such Federal agency to cooperate with like agencies of the State governments in holding joint hearings, making joint findings of fact and entering joint orders."

Amendments to the Securities Act of 1933 Recommended

Mr. Herbert A. Friedlich, of Chicago, Chairman of the Committee on Amendments to the Securities Act of 1933, presented its report. He stated that the Committee had been considerably disturbed by reports in the press to the effect that its report had stated that in its opinion the Securities Act was unconstitutional. It had not done so, as it felt it was no part of its function to express an opinion on the constitutionality of the Act and thought that it had made the matter perfectly clear.

During the past year Congress had adopted no amendments to the Securities Act and none were pending at this time. The Commission had been attempting to administer it in a practical and sympathetic manner and he did not believe there could be criticism of its efforts. However, there was a distinct feeling that the registration form, as well as other forms, could be greatly simplified.

The Committee had recommended a great many amendments to the Act. The chief amendments dealt with two categories, the first being the generalities in the language of the Act. Those who had had any experience with the legislation in their practice realized how difficult it was to advise people whether they did or did not come within the Securities Act. The principal difficulty was that there had been no court decision in connection with it, and probably for a good many years there would be none. The Committee therefore recommended that the Act be made specific in a great many particulars, so that lawyers, underwriters, issuers, industry in general, might know what their liabilities were and what action should be taken and what action should be avoided.

The second category of important amendments dealt with the civil liabilities of issuers, underwriters, directors, accountants, engineers and what not. The Committee recommended that the Act be amended to require that a plea in a civil suit to recover damages for an unintentional misstatement should be required to show that the plaintiff relied on that misstatement. The Securities Exchange Act of 1934, a part of related legislation, required this of the plaintiff and there was no reason why a different rule should be laid down under the Securities Act. The Act does provide that if the defendant can show that the damage was not caused by the misstatement, the plaintiff can not recover, but the Committee felt that the burden should be on the plaintiff as in ordinary cases.

The recommendations of the Committee were adopted after which a resolution was passed continuing the Committee.

Committee on Commercial Law and Bankruptcy Reports

Chairman Jacob M. Lashly, of Missouri, presented the report of the Committee on Commercial Law and Bankruptcy. It had already been printed in the Advance Program, and Chairman Lashly restated the substance of it for the meeting. He referred to the growing importance of bankruptcy in view of the present commercial and economic confusion and upheaval. He also dealt somewhat at length with what the Committee regards as the crux of the economic problem, namely, the fact that the country's normal ratio of debt and credit is out of balance.

He stated that the ratio of assets to liabilities at present is 1.4 to 1, whereas in normally prosperous times such ratio is 2.5 to 1. One of the primary and fundamental conditions of recovery was the restoration of the normal workable ratio, which could be done by scaling down the liabilities or expanding the appraised value of the assets. The former was the only sound way, as an expansion of the appraisal of the wealth of the country could only be achieved by the cheapening of the value of the currency.

Chairman Lashly then took up the five point bankruptcy program and commented on its effect in achieving the desired end. The corporate reorganization law was the principal one to which lawyers had generally turned during the past year for assistance in handling the debtor and creditor relationship. It had not been long enough really to determine what was going to come from the laboratory experience with this law. However, there had been a good deal of recourse to it, and Chicago seems to have been the center of experimental work along these lines.

Mr. Lashly, with a slight apology for the preoccupation of his Committee with strictly economic subjects, then pointed out three points of contact between the government and the people of the country, at which there had been a steady, almost unperceived, march in the direction of collectivistic economy. The first point of contact was that of the government with the management of wealth, the second, the debtor and creditor relationship, and the third the present situation as to federal governmental dependency.

As the Chairmen of two important Commit-

tees scheduled to report were not present, being engaged in the session of the General Council, Mr. Lashly was invited to continue his general discussion, which he did. His report was received and filed.

In order to fill in the interim further, Mr. Newby, of Los Angeles told the familiar story of the man at a funeral who, during a momentary pause in the procedure, requested to be allowed to make a few remarks about the climate of California, and called on Mr. Charles M. Hay, of Missouri, to perform a similar function. Mr. Hay responded with alacrity, and started with a glowing tribute to California. He understood how they felt so close akin to God after seeing how much their energy and enterprise had accomplished with a country that God seemed to consider hopeless. However, out in Missouri, God had already done all these things for them.

Tribute to Missouri Gets in the Record

Mr. Hay then drifted by easy gradations into the second phase of his address, and it was soon discovered that he was not delivering the expected eulogy of California but was devoting himself entirely to Missouri. Before the point of order could be raised he had gotten this little tribute to his own State into the record:

"Missouri is neither North nor South nor East nor West. Missouri lies close to the pulsing heart of America. We acknowledge our indebtedness to all the sections for we are at the center of the country. We have garnered unto ourselves and unto our souls the best from every section. The typical Missourian, we boast, is the ideal American. He has the hospitality of the Southland in his soul, the strength of the Northland in his sinews, the light of the East in his eyes, and the glow of the West on his brow."

At this point Mr. Harry Lawther, of Texas, a member of the Executive Committee, offered the following resolution, which was unanimously adopted amid loud applause:

"Resolved that the American Bar Association expresses its sincere appreciation for the generous hospitality extended to it during this meeting. This appreciation extends to the Bar of California, the Bar of Los Angeles, and the clubs and organizations and citizens of Los Angeles. As everything else in California, our entertainment and reception have been superlative. Full of gratitude, the members of the American Bar Association, in departing from this lovely city which nestles here amongst the orange and citrous groves of Southern California, as beautiful to look upon as a jewel upon a woman's breast, will not say good bye but only au revoir."

At this point, Mr. George M. Morris, Chairman of the Committee on Federal Taxation, presented its report. It had been printed in the Advance Report and was made up largely of comment. However, there were three resolutions which were proposed. The first was that "the Committee be continued and be directed to act under the mandates previously given by the Association respecting legislation;" the second, that it "be directed to submit suggestions regarding proposed legislative changes to the Annual Meeting of the Association in 1936, and earlier if need be to the Executive Committee," and the third, that it "be directed to continue to present to the Court, the Treasury Department and the Board of Tax Appeals suggestions to effect improvements in tax administration and procedure." All these resolutions were adopted.

Reasons for Opposing "Anti-Lobby Bill"

Chairman Morris further stated that a supplementary report of the Committee had been made necessary by reason of the progress of legislation to the possible passage stage since the report had been made. One was S. 2512 requiring the registration of lobbyists and others concerned in matters affecting government contracts, the action of government officials, etc. The bill was capable of a construction which would require registration of all persons engaged in appearance before the Treasury Department and the United States Board of Tax Appeals. The Committee felt that that was not the purpose of the bill. The Committee had recommended to the Executive Committee that opposition be made to the bill, so far as it could be construed to that effect, and the Executive Committee had adopted this position. A special Committee had been appointed and the legislation would be opposed.

The other bill referred to in the supplemental report was H. R. 8492, to amend the Agricultural Adjustment Act and for other purposes. One section, No. 32, of this bill, as reported out by the Senate Committee on Agriculture and Forestry, deprives all Federal and State courts of jurisdiction to entertain any suit or proceeding for the recoupment, set-off, recovery, refund or credit of, or any counterclaim for any tax assessed, collected or accrued under the Agricultural Adjustment Act prior to the adoption of the proposed amendment, or for damages for the collection thereof. The purpose of this provision, with the exception of certain rather limited cases, was said by the Senate Committee to be to prevent any refund of taxes already collected upon the ground that the act or actions of the Secretary thereunder were illegal.

The supplementary report covered further details as to objectionable provisions in the bill and stated that "from the foregoing, it will be seen that notwithstanding the recognition in the bill itself of its possible unconstitutionality, the courts are denied jurisdiction to pass upon controversies concerning the taxes already collected, and with respect to future taxes, are denied jurisdiction to prevent collection." The Committee recognized that the proponents of the bill were faced with the problem of avoiding unjust enrichment to the actual payer of a tax who may have passed on the economic burden in connection therewith. However, the Committee believed that the conditions which the bill would impose upon the recovery of taxes paid after the passage of the bill were in a large number of cases impossible or impracticable of fulfillment. The situation appeared to be violative of the American system, the Constitution and recognized lawful procedure, and the Committee proposed the following resolution for adoption:

"Resolved, that the American Bar Association opposes the principle of denying to citizens of this country a judicial forum in which to seek the return of taxes unlawfully assessed or collected. We believe that any person who establishes within a reasonable requirement for diligence, that he has paid taxes unlawfully assessed or collected, should continue to have the right to maintain an action for

the refund or recovery thereof, with provision, if necessary, for the intervention of others claiming an interest in such payments as their interests may appear.

"Be it further resolved, that we are opposed to those provisions in the bill now pending before the Congress of the United States designated as H. R. 8492 (to amend the Agricultural Act and for other purposes) which would deprive the Federal and State Courts of jurisdiction to entertain suits or actions for the refund or credit of taxes heretofore collected or accrued under the provisions of the Agricultural Adjustment Act.

"Be it further resolved, that the American Bar Association opposes those provisions in the said Bill which would deprive the courts of jurisdiction to prevent or restrain the assessment or collection of any taxes unlawfully claimed to be due or to have accrued under the Agricultural Adjustment Act or any amendments thereto; or which deprive the courts of the jurisdiction to render a declaratory judgment with respect to such taxes.

"Be it further resolved, that we are opposed to those conditions in the said bill upon the recovery of taxes shown to have been unlawfully assessed or collected which will be found, in many cases, impossible or impracticable of fulfillment with the result that the Government may unjustly retain moneys which have been unlawfully collected.

"Be it further resolved, that this Association's Committee on Federal taxation be instructed to oppose such provisions of the said bill and press for the repeal of provisions of such character should they be enacted into the law."

The Chair ruled that as the resolutions proposed no legislation but simply opposition to legislation, they could be presented at that time in accordance with the By-Laws, without being printed in advance.

Committee on Admiralty and Maritime Law Recommends Legislation

Mr. T. M. Shackleford, of Florida, presented the report of the Committee on Admiralty and Maritime Law in the absence of

Chairman Lawrence Bogle. The Committee had spent considerable time in endeavoring to secure legislation by Congress which had been recommended by previous committees and heretofore approved by the Association. H. R. 29, a bill dealing generally with the subject of proctors' docket fees, etc. had passed the House and was pending in the senate calendar. There was hope that it would be passed before Congress adjourns.

The Committee had given further study to the question of admiralty jurisdiction of damages caused by collision between vessels upon navigable waters and a land structure. It felt that the recent decision of the United States Supreme Court in the Thomas Barlum case was directly applicable to the question of the authority of Congress to create a maritime lien in admiralty for damage of this character. It therefore submitted a resolution purging such legislation.

At this point, Chairman Martin recognized Hon. George H. Smith, of Utah, Chairman of the General Council. He presented its report on the nomination of officers of the Association for the ensuing year, and moved that the rules be suspended, that the nominations be closed and that the report of the nominating committee be approved and the Secretary be directed to cast the vote of the Association. The Council had nominated Hon. William L. Ransom, of New York, for President, and the list of Vice-Presidents and other officers which appear elsewhere in this issue.

This report was the signal for some interesting proceedings. Mr. Alonzo Hoff, of Illinois, arose and stated that he desired to place in nomination for President of the American Bar Association Hon. James M. Beck. Mr. Martin stated that the Committee on Nominations for this body was the General Council but that, however, did not preclude nominations being made from the floor. There was a motion before the House, and if that carried, the Secretary would cast the ballot as instructed. If, however, it was lost, the nominations remained and the report of the Committee with its nominations would still stand before the House, but other nominations could of course be made from the floor.

Presidential Election Contest Staged

There were quite a number of motions and suggestions and amendments with reference to the best method of getting the floor nomination before the house, either by amending or adopting a substitute for Chairman Smith's motion. Finally Hon. Guy R. Crump was recognized by the Chair. He stated that he was a member of the General Council from California. He believed that it was the temper of the meeting that full opportunity be given for nominations from the floor without extended parliamentary debate or parliamentary technicality, and he concurred in that view. He thought that he voiced the sentiment of the General Council when he said that in making these nominations it did not intend in any way to shut off the right of the members to nominate from the floor and to express their opinions. They were faced, however, with certain practical difficulties with reference to the manner of voting since there were a number of people present in the audience who were not entitled to vote.

He stated that in order to clarify the situation he was going to ask Mr. Smith, the Chairman of

the Council and also his second to consent to the withdrawal of the motion. Then under the ruling of the Chair, the report of the Committee would still be before it and other nominations would be in order. He then proposed to move that all non-members of the Association retire from the main floor, that door keepers be appointed to prevent anyone not a member of the Association from entering, and then that members should present any nominations from the floor which they desired and, finally, that the vote be taken by ballot. Mr. Smith consented to withdraw his motion.

Mr. Stone, of Kansas, approved the suggestion of Judge Crump, except that he thought that the question of voting by ballot should be acted on separately. Judge Crump agreed but later withdrew his assent, as he thought a vote by ballot was important in order to be sure that none but members of the Association participated.

At this point Chairman Martin stated that some of the suggestions that had been made were mere matters of procedure, with which the Chair could deal without any motion at all. He stated that without this formality he would exclude persons from the lower floor who were not members, appoint persons to guard the doors so there would be no question about that, and then afford an opportunity for nominations from the floor. After the nominations had been made the meeting could decide on the method of balloting. He suggested that this course seemed likely to expedite matters and asked if the meeting was willing to follow the Chair along this line. After some further discussion this procedure was followed.

A little later a vote was taken on the method of balloting and it was decided that it should be by rising vote.

The Vote Is Taken and Judge Ransom Wins

Then followed one of the most tense scenes in the history of the Association. Breaking the precedents of long years, the contest for the presidency went on the floor of the house. Mr. Hoff renewed his nomination of Hon. James M. Beck, and Chairman Martin announced the appointment of tellers to count the vote. They were three ex-Presidents of the Association, Hon. Silas H. Strawn, of Chicago, Hon. Guy A. Thompson, of St. Louis, and Hon. Earle W. Evans, of Wichita. It was finally decided that those favoring each of the candidates should file before the tellers and be counted instead of simply rising from their seats in the theatre.

Chairman Martin then said that all those who favored William L. Ransom for president should file past the tellers, and the procession began. It was evident that a strong vote was being cast for him, but enough members remained seated to leave at least some question as to the result. Following this, those who favored Hon. James M. Beck filed past the tellers, and these gentlemen then made their report to the Chairman. Whereupon he announced that the report was as follows: William L. Ransom, 209; James M. Beck, 178. The former having received a majority of the votes cast, he declared him to be elected President of the Association.

Mr. Alonzo Hoff, of Illinois, who had placed

Hon. James M. Beck in nomination, then moved that the election of Judge Ransom be made unanimous, which motion was seconded and carried. Mr. Newby, of California, then moved that the Chairman cast a unanimous ballot for the remaining officers nominated by the General Council, which motion carried. Chairman Martin acted accordingly and declared that the remaining persons on the list had been elected for the respective offices.

He then appointed Hon. Silas H. Strawn, Governor Whitman and Hon. Earle W. Evans as a committee for the purpose of bringing Judge Ransom before the meeting. Mr. Frank J. Hogan, of Washington, D. C., suggested that Mr. Hoff, of Illinois, be made a member of that committee, and Chairman Martin replied that it would be a pleasure to appoint him also.

Chairman Martin then resigned the gavel to President Scott M. Loftin, who presided at the remainder of the meeting.

The committee soon returned with the President-elect, and President Loftin stated that he wished, in surrendering the gavel which was the emblem of the office, to pledge to him every possible support that he could give during the coming year. He wanted him to feel that he could call on him at any time in any way for assistance in order to make his administration a success. He bespoke for him the same cordial, generous support that had been given himself during the past year, and he felt that with these forthcoming, the able President-elect, who was so familiar with the affairs of the Association and had served so well and ably, would have an administration that would not only be a credit to himself but reflect honor on the Association.

President-Elect Pledges Himself to Work for Better Bar Organization

The audience arose and applauded, and President William L. Ransom then spoke as follows:

"Mr. President, Members of the American Bar Association, Ladies and Gentlemen: I should not and could not think of what has just been said as anything in the nature of a personal compliment. To me the choice which has been made is only a call for service from me if I can render it to the lawyers of the land. It is, of course, a great honor to be the choice of this convention, and especially an honor to be the choice as compared with one of the country's most distinguished lawyers whom we all love and hold very deep in our hearts.

"I am one of those who have long believed that it is a high privilege, perhaps the highest privilege, to be an American lawyer, and the highest privilege of the American lawyer, as I see it, is the privilege and the duty of taking part in the organized bar and making it an instrument of public welfare in the United States (Applause). To my mind, this American Bar Association belongs to the practicing lawyers of this country, and this American Bar Association can and will be made whatever the lawyers of this country wish it to be.

"At the present time, I believe that they want a better and more representative bar organization throughout the country, an organization that is under the democratic control of the lawyers of the whole country, with machinery which makes it responsive to their wishes, alert to their needs as a profession, and entitled to speak their views with an authoritative voice because the machinery of organization provides the means whereby the lawyers may make known what they desire their Association to do.

"Some of you may have caught the phrase in the last letter of Lawrence of Arabia to his biographer, when he said, as I recall it, that progress is made not by a single genius but by a common effort. At this time and during the coming year, may we have a continuance and an acceleration of the common effort that is being made by the lawyers of this country in order to make the American Bar Association, in relation to the other organized bar associations of the country, a real aid to the profession and the public.

"During the coming year, I pledge you that I shall devote myself unreservedly to your work. I shall need your advice and your suggestions. I shall hope to work closely with the General Council and with the committees and the Sections of this Association. Any member of this Association may feel free to send me his views on any subject that relates to the Association with an assurance that those views will be given consideration on their merits. (Applause.)

"The great thing that the American Bar Association needs from my experience, on the basis of what I have observed in your committees and Sections, is to know what the lawyers of this country really want about the organized bar of America. If errors are ever made, it is because that is not ascertained and not because of any desire to go contrary to the opinion of the bar of America.

"I say to you that I shall be glad to go to such State Associations as want me to come, and I shall go not so much to speak as to listen. During the coming year I pledge you that I shall do everything in my power to clear the way to bring about as soon as possible, if the lawyers of this country really want it, a better organization of the bar, that will speak not the views of any individual, not the views of any group or committee, but the ascertained and mature judgment of the profession, and in my judgment there is no better voice for the future of America. I thank you!" (Applause)